S. HRG. 98-199

FISH AND WILDLIFE CONSERVATION ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 696 and H.R. 1935

BILLS RELATING TO MATAGORDA ISLAND, TEX.

S. 1271

TO ESTABLISH THE NATIONAL FISH AND WILDLIFE FOUNDATION

H.R. 1723

AUTHORIZING APPROPRIATIONS FOR THREE WILDLIFE REFUGES

MAY 19, 1983

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FISH AND WILDLIFE ISSUES

THURSDAY, MAY 19, 1983

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION,
Washington, D.C.

The subcommittee met at 10 a.m. in room SD–406, Dirksen Senate Office Building, Hon. John H. Chafee (chairman of the subcommittee) presiding.

Present: Senators Chafee, Symms, Bentsen, Durenberger, and Mitchell.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Good morning, everyone.

This is a hearing before the Subcommittee on Environmental Pollution. I welcome you all here. Today's hearing will focus on three separate issues, all of which relate to fish and wildlife conservation. The first topic of discussion will be on legislation, S. 696 and H.R. 1935, which is to ratify an exchange agreement concerning national wildlife refuge lands located on Matagorda Island in Texas.

The House legislation was unanimously approved on April 19 and referred to this committee. The Senate bill, S. 696, was introduced by Senator Bentsen, a very distinguished member of the full committee, and Senator Tower on March 7 of this year.

We expect the testimony of the first two witnesses to focus on the Matagorda issue. The Department of Interior should be prepared, however, to answer questions on the other two issues before the subcommittee, namely H.R. 1723, which is a bill to authorize appropriations through fiscal year 1986 for the Great Dismal Swamp, the Minnesota Valley, and the San Francisco Bay National Wildlife Refuges, and S. 1271, a bill to establish a national fish and wildlife foundation.

I know that Senator Durenberger, a very valuable member of this committee and of this subcommittee, is particularly interested in S. 1723, that is, the Great Dismal Swamp, because it relates to the Minnesota Valley.

The third panel of witnesses will discuss the National Fish and Wildlife Foundation and reauthorization of the Minnesota Valley Refuge.

I want to take this opportunity to publicly thank Ted and Francoise Gianoutsos for their generosity and dedication to provide the impetus for legislation to establish a Fish and Wildlife Foundation,

and I publicly want to thank you here. Your sincerity and willingness to devote not only money but, equally and just importantly, time to make the contribution to society as a whole, to promote fish and wilflife conservation is an example, I think, we could all follow.

I also want to thank our witnesses, several of whom are from out of town and have taken time to appear before us. I am in a difficult spot today; before the Finance Committee, of which Senator Bentsen and Senator Durenberger are very distinguished members, there is a measure that I am particularly involved with, and so I will not be able to stay very long.

Senator Bentsen has kindly agreed to chair here should any gap occur; Senator Symms said he would fill in, too, but he has scheduling problems.

We want to hear the testimony. Those of us who won't be present will have the opportunity to review the testimony afterwards.

So I thank my fellow members for appearing, and I know that Senator Bentsen has a statement for the record.

OPENING STATEMENT OF HON. LLOYD BENTSEN, U.S. SENATOR FROM THE STATE OF TEXAS

Senator BENTSEN. I want to thank the distinguished Chairman of this committee, since he will be exercising, probably, some of my proxies on some of these issues in the other committee. I know I will be well represented there on an issue with which he is concerned. I want to welcome all the witnesses here this morning, but particularly a very dear and an old friend of mine, Perry Bass. He is the chairman of the Texas Parks and Wildlife Commission, and a dear friend of mine for many years and a great supporter of conservation.

I want to welcome my friend, Garry Mauro from the Texas General Land Office. I am very proud of their accomplishments in natural resource conservation. They have brought a very high degree of professionalism to their work.

Senator Chafee, I am particularly appreciative of your letting me join the subcommittee this morning in its review of my legislation to ratify the memorandum of agreement between Texas and the Department of the Interior with respect to Matagorda Island. I appreciate the opportunity to participate in the consideration of this measure which is of great importance to Texas.

Matagorda Island is a Texas barrier island of approximately 50,000 acres. I have been on it many, many times. Approximately 19,000 of its acres have been included since November 1971 in the Aransas National Wildlife Refuge through a memorandum of understanding with the Fish and Wildlife Service and the Air Force.

Although portions of the island receive the protections accorded a National Wildlife Refuge, the Federal lands do not contain the most important wildlife habitat on Matagorda Island. That habitat, instead, is found on the approximately 24,000 acres of land owned by the Texas General Land Office. The GLO land contains most of the island's bayside wetlands, which are critically important to the whooping crane and many other wildlife species.

The split jurisdiction on Matagorda Island with the most important habitat outside the National Wildlife Refuge, raises a unique conservation challenge. The Matagorda Memorandum of Agreement reflects energetic and constructive efforts on the part of Texas and the Department of the Interior to meet that kind of challenge. I understand the National Audubon Society also participated in drafting this agreement, and I want to recognize them for their contribution.

The agreement reflects a spirit of compromise on the part of all interested parties. Texas felt that it could provide the best management for Matagorda. For many years it had managed its area of the island, the portion containing the premier wildlife habitat, to the betterment of its wildlife resources, particularly the endangered whooping crane.

The Federal Government, understandably, wished to include the State-owned land as part of the Aransas National Wildlife Refuge. Both the State and Federal Governments agreed that integrated management of the public lands on Matagorda would provide the best means of conserving its wildlife. The Matagorda agreement meets all of these requirements. The agreement would provide integrated management, by Texas, of the publicly owned lands on Matagorda as a unit of the National Wildlife Refuge System.

I believe the Matagorda Agreement is a sound and workable proposal. I have heard it critized as a give-away of the 19,000 acres of the Federal portion of the island when just the opposite occurs; the State-owned lands, through easments, would become a part of the Aransas National Wildlife Refuge.

It has been suggested that the State will manage Matagorda as a park for recreation, rather than a wildlife conservation area. In fact, the lands must be managed in accordance with the National Wildlife Refuge System Administration Act, and all activities must be compatible with wildlife conservation. Additionally, the State has recently amended the language in pertinent appropriations bills to clearly delineate wildlife conservation as a maximum responsibility.

It has been argued by some that State management of Matagorda erodes protection for the whooping crane. I believe the State has done a fine job of managing the primary whooping crane habitat for many years. For those who doubt this, the agreement, by bringing the State lands into the National Wildlife Refuge System, would extend the protection of Federal statutes to these lands for the first time. Also, the agreement would not diminish the protection currently afforded the whooping crane under the Endangered Species Act. Indeed, for hunting activities it extends the act's prohibition on jeopardizing the existence of a species to the State land for the first time.

The agreement has been criticized for allowing hunting and fishing, grazing, and oil, gas and other mineral exploration and development along the island. It should be pointed out that these activities are all permitted and ongoing under present management by the Fish and Wildlife Service.

Finally, it is suggested that it is wrong, in principle, for a State to manage lands within a National Wildlife Refuge. I would disagree with this. State wildlife management agencies have histori-

cally been responsible for the management of resident species of wildlife and bring a great deal of experience and expertise to that task.

In those instances such as the agreement for managing Matagorda, where there are assurances that the Federal lands will be managed in accordance with Federal law and subject to Federal review, State management can enhance wildlife conservation.

I know that the opponents of this agreement are sincere in their concern that it might not provide adequate protection for the Islands wildlife resources and that it sets, what is to them, an unacceptable precedent for State management of national wildlife refuges. I hope that this hearing will allay their fears. I know that time will certainly do that.

Thank you, Mr. Chairman.

Senator CHAFEE. Thank you very much, Senator Bentsen.

Senator Mitchell, do you have a statement you wish to make?

OPENING STATEMENT OF HON. GEORGE J. MITCHELL, U.S. SENATOR FROM THE STATE OF MAINE

Senator MITCHELL. Thank you, Mr. Chairman.

Senator Bentsen has eloquently described the situation with respect to the first two bills to be considered today. There are, as we all know, four matters before the committee, and I would like to address myself briefly to the last of the four, S. 1271, a bill to establish a National Fish and Wildlife Foundation. I may not be here by the time the hearing gets to that point, as I have to leave for another committee hearing, but I did want to particularly welcome Ted and Francoise Gianoutsos here today. I am pleased to have cosponsored legislation to establish the U.S. Fish and Wildlife Foundation, that is, S. 1271.

It is fair to say that because of their hard work and generosity, the Gianoutsos should be credited with the initiation of this legislation, and I join with them in hoping that the Foundation will provide opportunities for other private citizens to contribute to fish and wildlife conservation in a very generous manner, which the Gianoutsos have done so.

Senator CHAFEE. Thank you very much, Senator Mitchell.

The first panel, if you would please come forward, Mr. Craig Potter, Deputy Assistant Secretary for Fish and Wildlife and Parks, Mr. Hester, who is the Deputy Director for Fish and Wildlife Service, Mr. Garry Mauro, commissioner of Texas General Land Office and Mr. Perry Bass.

If you gentlemen would please come to the table, why don't we take them in the order called? Mr. Potter, why don't you proceed.

STATEMENT OF CRAIG POTTER, DEPUTY ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY F. EUGENE HESTER, DEPUTY DIRECTOR, FISH AND WILDLIFE SERVICE

Mr. POTTER. Mr. Chairman, it is a pleasure to be here.

Senator CHAFEE. You have a formal statement here that will go in the record. If you could summarize, that would be helpful.

Mr. POTTER. I will do that.

Senator CHAFEE. In your testimony, you are going to restrict your remarks to the Matagorda Agreements?

Mr. POTTER. The written statement addresses all of the bills that we have been asked to speak on. My short summary will focus only on Matagorda.

Senator CHAFEE. Fine.

Mr. POTTER. Assistant Secretary Arnett asked me to convey to you his regards and apologies for his inability to be here. At the table with me is Dr. Hester who has already been mentioned, and we also have Fish and Wildlife Service people present to answer any questions that may arise that we can't answer.

As I indicated, my prepared statement addresses H.R. 1723, reauthorizing three national wildlife refuges; S. 696 concerns Matagorda Island, and it's been very succinctly summarized by Senator Bentsen; and S. 1271, establishing the U.S. Fish and Wildlife Foundation.

S. 696 would ratify the exchange of conservation easements and the memorandum of agreement between the Department of the Interior and the State of Texas concerning Federal and State lands on Matagorda Island. While we believe that such legislation is unnecessary, we have no objection to its enactment.

On December 8, 1982, the General Services Administration transferred 19,000 acres of excess Federal land on Matagorda Island to the Fish and Wildlife Service. On that same day, the Department of the Interior acquired from the State of Texas a 100-year conservation easement on 24,000 acres of State tidelands and beaches for inclusion in the refuge system. This was in exchange for a 100-year easement to the State on the Federal acreage.

In addition, the Secretary of the Interior and the Governor of Texas entered into a memorandum of agreement for cooperative management of the Federal wildlife refuge lands and adjoining State lands.

I would like to submit these easements and the memorandum of agreement for the hearing record if that is acceptable. (See pp. 41–66.)

The 19,000 acres of Federal land on the island will remain under the primary jurisdiction of the Fish and Wildlife Service. With the exchange of conservation easements and under the agreement, however, the entire 24,000 acres will be included within the National Wildlife Refuge System to be managed by the Texas Parks and Wildlife Department as one unit in accordance with the agreement; also in accordance with Federal refuge regulations and subsequent federally approved operations and plans.

We believe that both the exchange and the agreement are fully authorized by the National Wildlife Refuge System Administration Act. Section 668dd(b)(3) authorizes the Secretary "to acquire lands or interests therein by exchange (A) for acquired lands or public lands, or for interests in acquired or public lands, under his jurisdiction which he finds to be suitable for disposition * * *."

It was pursuant to this authority that the Secretary acquired, by exchange, the conservation easement on the State lands at Matagorda. The refuge system received an interest in 24,000 acres of State land providing for the management of these valuable lands for the benefit of wildlife, particularly endangered species.

The State of Texas was granted an interest in the Federal acreage on Matagorda for access and conservation management.

The parameters of the State's managment authority are set forth in considerable detail in the agreement. The public land on the island will be managed in two zones confining most of the public use to zone B and reserving zone A for intensive wildlife management and some very limited public use. No activity which affects the Federal lands or the Federal conservation easement held on state lands is permitted unless it is compatible with the purposes for which these refuge lands were added to the system.

These determinations are to be made by the Service during its review of the State's annual operations plan. In addition, Texas is required by the agreement to refer to the Fish and Wildlife Service regional director all applications relative to permits, easements, rights-of-way, and all other proposed nonwildlife or nonpark uses except those relating to oil and gas exploration and development, which are valid existing rights held by third parties or part of the subsurface estate retained by the State of Texas. The agreement also provides a detailed mechanism for the Service to take action should it be determined that the Texas Parks and Wildlife Department has conducted or permitted any incompatible activity on the Federal lands or affecting the Federal easement.

The Federal property on Matagorda, which was once, as Senator Bentsen mentioned, an Air Force bombing range, has been the subject of much controversy for many years. We believe that this plan of action is a creative and reasonable solution to a very longstanding problem. It satisfies Federal and State concerns for comprehensive management of Matagorda Island. It provides for the continued protection of the 19,000 acres of Federal land, and it adds 24,000 acres of State land to the National Wildlife Refuge System. It more than doubles the acreage of Matagorda Island in the refuge system as a result, and it guarantees that the conservation of the State wetlands that are critical habitat for the endangered whooping crane and essential wintering habitat for other migratory birds.

We are proud of our progress in resolving this issue, and we welcome congressional endorsement of the exchange and the agreement although we do not believe such ratification is necessary in this situation.

We believe that Congress carefully crafted the authority for exchanges in the National Wildlife Refuge System Administration Act to provide administrative flexibility to strengthen the refuge system. Our actions have done that, and we feel it is important that the legal authority to solve other complicated resource problems not be curtailed.

With that, Mr. Chairman, I would defer to the other members of the panel and I can answer questions or however you wish to proceed.

Senator CHAFEE. Why don't we take Mr. Hester? Do you have some comments, Mr. Hester?

Mr. HESTER. No separate comments.

Senator CHAFEE. Do you support this agreement?

Mr. HESTER. Yes, I do.

Senator CHAFEE. Mr. Mauro?

STATEMENT OF GARRY MAURO, COMMISSIONER, GENERAL LAND OFFICE OF TEXAS

Mr. MAURO. Mr. Chairman, as newly elected land commissioner——

Senator CHAFEE. Is that an elected position?

Mr. MAURO. Yes, sir, a statewide elected position.

Senator CHAFEE. You represent a great big State with a lot of people. Congratulations on your victory.

Mr. MAURO. Thank you, Mr. Chairman.

During that campaign, this particular agreement was discussed at length and was aired publicly during the entire campaign. I discussed it at great length with my predecessor. I have spent many hours looking over the details of it.

Senator CHAFEE. Your predecessor ended the agreement?

Mr. MAURO. Yes, sir, he did.

Senator CHAFEE. And you support it?

Mr. MAURO. Yes, sir.

I am convinced that the agreement will protect the Matagorda area for all the citizens of the United States for years to come. I aporeciate being here, and I will be available for any questions you all might have.

Senator CHAFEE. Thank you.

I apologize to our witnesses. The Finance Committee has just started up and I have to leave. Senator Bentsen and Senator Mitchell have kindly agreed to carry on, and Senator Symms should be here soon. Thank you very much.

Let me just say this about these agreements. I commend the Fish and Wildlife Service for entering into the agreements. I think there are all kinds of ingenious arrangements that can be made, whether it is easements or whatever it is, between private parties and States, all with the objective of protecting fish and wildlife. I recognize your concerns, Mr. Potter, that you have this power anyway and it's not necessary to go forward with this legislation.

I am not going to argue with that. We won't accept it as a precedent. I haven't heard those who are in opposition. I guess the Audubon Society is supportive, but Defenders of Wildlife are against it. I understand a suit has been brought but it seems to me to allay the problems of the suit, this legislation is helpful. But in no way are we suggesting that in future cases, you have to have legislation in order to enter into agreements. That is not the basis. We are not making any precedents should we aporove this legislation.

But I commend you for trying to work out agreements. This makes common sense to me.

Thank you gentlemen. Thank you, Senator Bentsen.

Senator BENTSEN [presiding]. Thank you very much, Mr. Chairman.

Mr. Mauro, some of the opponents have raised questions about how the State of Texas might manage Matagorda Island, that they would make it primarily for intensive recreational purposes. What do you anticipate the management objectives to be?

Mr. MAURO. Of course, I think we will be managed for wildlife management and conservation, not for intensive recreational purposes. As you are probably aware, Senator, there was a specific

piece of legislation passed that Governor White signed on April 19, that very clearly stated that this area will be managed for wildlife rather than intensive recreational purposes.

Senator BENTSEN. Do you anticipate that you will modify, in any substantial way, the current management of the Island?

Mr. MAURO. I can't imagine modifying it in any way right now, Senator. I think the work, the thought that has been put into this project, I think we will have the best wildlife conservation management area in the country.

Senator BENTSEN. I would like to now call on Mr. Perry Bass, who is the Texas Parks and Wildlife Commission Chairman.

STATEMENT OF PERRY R. BASS, CHAIRMAN, TEXAS PARKS AND WILDLIFE COMMISSION

Mr. BASS. Thank you, Senator Bentsen.

First let me thank you for your warm introduction. That was very nice of you.

Second, may I introduce to the committee Mr. Ted Clark, our director of wildlife, and Mr. Jim Bell, our director of parks.

Senator BENTSEN. We are pleased to have you.

Mr. BASS. They may assist in answering any questions that the committee might have.

I will make a short summary of my statement, and sir, I request that my complete statement be entered into this record.

Senator BENTSEN. That will be done.

Mr. BASS. My name is Perry Bass. I am the chairman of the Texas Parks and Wildlife Commission. I welcome this opportunity to appear before you and to join with the National Audubon Society and the Commissioners of the General Land Office of the State of Texas in support of S. 696. The National Audubon Society has a distinguished record over many years for its successful efforts to save the magnificent whooping cranes and other protected wildlife that use Matagorda Island.

In S. 696, we ratify an agreement between the Federal Government and the State of Texas that will clearly further that effort, because the agreement provides that the State-owned wetlands on Matagorda Island will be placed by easement into the National Wildlife Refuge System and that both State and Federal lands on Matagorda Island will be under unified management, utilizing the principles developed for the National Wildlife Refuge System.

The easement also prohibits the construction of a causeway, commercial development and recreational activities that are incompatible with the primary purposes of the refuge.

The Texas Parks and Wildlife Commission, representing the State of Texas, has had a longstanding interest in managing Matagorda Island since the federally owned portion was declared excess by the Air Force in 1975. As you know, the Air Force seized this island in World War II and used it as a bombing range. The Air Force continued to use it for military purposes 1975. Since 1975, the federally-owned portion of the island has been administered by the Fish and Wildlife Service, although without much capital investment because of its uncertain status.

The state's interest in Matagorda Island stems from the unique factual situation on the island. The State owns and manages the island's wetlands which, in terms of biological productivity, constitute the most valuable portion of the Matagorda Island system. In fact, the valuable habitat for whooping cranes on Matagorda Island is the State-owned wetlands.

While the Federal-owned uplands serve as a buffer zone, the wetlands are the critical areas for feeding and other day-to-day activities of the whooping cranes. Because these wet-lands are part of a trust fund for free public schools, the State cannot grant these wetlands to the Federal Government. However, all parties agree that unified management is desirable to bridge a difference in land ownership.

Because of this need to provide the unified management that will benefit the whooping cranes and other wildlife, the State has agreed to put its wetlands into the National Wildlife Refuge System, in exchange for the right to manage the federally owned uplands. Thus, the acreage on Matagorda Island included within the refuge system has more than dombled pursuant to the agreement and now includes the most valuable habitat for whooping cranes and other endangered and migratory birds that use the island.

The agreement prohibits intensive development for recreation. The State has also agreed that wildlife concerns will be preeminent, and any recreational uses that interfere with these wildlife practices will be discontinued. Thus, if the whooping cranes' range continues to expand, the State has agreed that its operations on Matagorda will place the whooping cranes and other endangered species needs first.

As you can tell from this brief description of the binding agreements that are an integral aspect of the easement exchange, the Texas Parks and Wildlife Department has committed itself to make wildlife concerns preeminent in its management of Matagorda Island. A violation of this obligation will lead to a termination of the agreement. The Parks and Wildlife Department has also worked through the Texas legislature this session and obtained an amendment to the legislative creation of Matagorda Island State Park and Wildlife Management Area. This bill, which has been passed by both houses, the House and the Senate and signed by the Governor, underscores the wildlife protection mandate for Matagorda Island and is thus fully consistent with the obligations of Park and Wildlife pursuant to this agreement.

I firmly believe that the proposed legislation is necessary to discourage future uncertainty over the management of Matagorda Island. As you are all aware, the official status of the island has been in limbo since the Air Force declared the lands excess in 1975, and even now, there is a lawsuit pending challenging the Department of the Interior's action in entering into this agreement. Unfortunately, there are those who would disagree with the Secretary's decision, but that does not invalidate Interior's compliance with the applicable statutes.

We regret their bringing of the lawsuit and the uncertainty that it causes. Enactment of S. 696 will be totally dispositive of that law-

suit and will thus insure the certainty of unified management of Matagorda Island which is so important to wildlife protection.

In conclusion, we believe that the National Wildlife Refuge System has benefited enormously by the State's willingness to manage the upland portion of that island in combination with the State-owned wetlands. Moreover, we believe that the State has the expertise, the funds, the manpower and commitment to protect and conserve the endangered species and other wildlife that inhabit Matagorda Island. The broad support of this bill has engendered is evidenced by the sound endorsement it received by the House of Representatives which passed the bill by a voice vote on the Suspension Calendar.

I thank you for this opportunity to appear before this committee. I would be happy to answer any questions you may have.

Senator BENTSEN. We now have Senator Symms here. He is acting chairman of the subcommittee, if I may proceed to question.

Senator SYMMS [presiding]. Yes.

Senator BENTSEN. In 1982, the Fish and Wildlife Service spent approximately $140,000 on Matagorda. They had one person stationed there 5 days per week. What level of resources would Texas plan to commit to the management of Matagorda?

Mr. BASS. Senator Bentsen, the present appropriation bill that is going through our biannual legislature in Texas and has been approved by all persons concerned calls for an appropriation of $824,000 for the operations of Matagorda Island over the next biennium.

This will give us somewhere between 12 and 16 people wo are dedicated to Matagorda Island. May I also add that in addition to this, we are moving, as soon as this transfer takes place, our fish division in that area from Seadrift over to Port O'Connor, and we will have the expertise of those additional biologists also at the disposal of Matagorda Island.

Senator BENTSEN. What I used to do years ago on weekends, when they didn't have anyone there, was to land my single engine plane on the beach and get out and fish for ribs and trout. I won't be able to do that any more, will I?

Mr. BASS. Well, no, sir, I don't think you will. We might provide you transportation, Senator, from the mainland over there any time you might request it, however.

Senator BENTSEN. I know this brings the culmination of many years of dedication and effort on your part and your deep concern about the conservation and resources of this area. I congratulate you on it.

Senator SYMMS. Thank you, Senator Bentsen.

Senator Mitchell?

Senator MITCHELL. I have no questions.

Senator SYMMS. I thank all of you very much for being here with us this morning and your two able Senators from Texas will probably enjoy the support of many of us to try to bring this to a close. We appreciate your being here.

Next, is panel No. 2, Steven J. Parcells, Defenders of Wildlife, and Amos Eno, National Audubon Society.

STATEMENT OF STEVEN J. PARCELLS, DEFENDERS OF WILDLIFE

Senator SYMMS. If you two will, please, come up.

Gentlemen, your entire statements will be made a part of our record.

Who would like to go first? Is Mr. Parcells here?

Mr. PARCELLS. Yes, right here.

Senator SYMMS. Since you are listed that way, we will start with you, first.

Mr. PARCELLS. Mr. Chairman, I have a more concise oral statement to make, but I would like to have my written testimony entered into the record in full.

Senator SYMMS. Your entire statement will be part of our record.

Mr. PARCELLS. Thank you, very much.

Mr. Chairman, and members of the committee, I am Steven J. Parcells, acting director of the Defenders of Wildlife.

I appear here today, however, in an expanded role as a spokesperson for the Defenders of Wildlife, Sierra Club, Friends of the Earth, Environmental Policy Center, Texas Committee on Natural Resources, National Wildlife Refuge Association and the Whooping Crane Conservation Association.

This group, with a combined membership of over 500,000 environmentally aware citizens, shares a common concern. We believe that the agreement entered into by the Secretary of the Interior and the Governor of Texas, on December 8, 1982, transferring management authority over the Matagorda unit of the Aransas National Wildlife Refuge to the State of Texas is detrimental to the wildlife on Matagorda and represents a serious setback in the environmental goals for which the National Wildlife Refuge System was established.

Particularly, we believe this agreement is an abdication by the Secretary of the Interior of management for a crucial unit of the refuge system, a system created to fulfill national environental objectives and international treaty obligations. Not only does this transfer jeopardize the recovery of the endangered whooping crane, a species to which this country and others are legally bound to preserve, it sets a precedent which threatens the very integrity of the entire refuge system.

By failing to recognize that Matagorda's wetlands, uplands, tidal flats and other habitats are indispensable components of a unified ecosystem which encompasses Aransas National Wildlife Refuge and the shallow bays in between, and upon which countless forms of wildlife, including the whooping cranes, depend, the agreement inadeqautely addresses the unique environmental concerns of the Matagorda area.

In this matter, I intend to highlight and focus on our major concerns.

First, we believe that the Secretary of the Interior exceeded his legal authority by entering into this agreement; that he has unlawfully delegated his secretarial responsibilities.

Congressional ratification of this transfer would give Secretary James Watt a seal of approval for an action in which he deliberately abandons his mandatory duties. Congress in 1966 established the Refuge Administration Act, "for the purpose of consolidating au-

thorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife."

Further, Congress stated that the system was to be, "administered by the Secretary through the United States Fish and Wildlife Service." That is, the Secretary of the Interior and only the Secretary may directly administer the units of the refuge system.

This mandate was upheld in *Trustees of Alaska* v. *Watt.*

Clearly, Congress envisioned a truly national system, and I might add that this vision can be traced back to 1903 when President Teddy Roosevelt created Pelican Island National Wildlife Refuge, 80 years ago. Implicit in the creation of our first national wildlife refuge, as well as in the creation of the Matagorda unit of the Aransas National Wildlife Refuge, are the principles that wildlife preservation is of the utmost national importance and that the Federal Government is uniquely suited to be the public agency with direct responsibility for the stewardship of certain of our wildlife resources.

Also implicit in the construction of the language found in the Refuge Administration Act is a more pragmatic recognition, and this is my second point. Simply, joint jurisdiction of national wildlife refuges does not work.

This committee has already squarely addressed this issue we face today. By favorably reporting on what is now known as the Game Range Act of 1976, this committee found that all units of the Refuge System play a vital role toward protection and enhancement of the Nation's indigenous wildlife and our national habitat diversity; and two, refuge management under joint jurisdiction does not properly fulfill the mission of the refuge system.

Now, these conclusions were not derived from idle speculation. The committee cited, a 1969 report by the Special Advisory Board on Wildlife Management, chaired by A. Starker Leopold, and that report noted, "No refuge in split jurisdiction encountered by this board was really properly managed. Every region of the National Wildlife Refuge System should, if possible, be incorporated fully into the jurisdiction of the Bureau of Sport Fisheries and Wildlife," which is now, obviously, the Fish and Wildlife Service.

In an undated report, "A Proposal for Single Agency Management," the Fish and Wildlife Service described the inherent deficiencies of joint jurisdiction over conservation of lands by agencies with common goals, but divergent management philosophies; and concluded: "As a result of these irresolveable difficulties, the public, in whose name these areas are managed, have not received full benefit of the natural resources found there, nor have these resources been adequately protected.

Joint administration of wildlife refuges has in the past proven to be inoperative because of conflicting missions between various agencies, State or Federal, and has consistently been rejected in this committee and in Congress and we would maintain that it should be rejected here.

The State of Texas operates under a different mandate than that of the Fish and Wildlife Service. The current Memorandum of Agreement allocates authority to the Texas Parks Wildlife Department to administer "all publicly owned land on Matagorda Island,"

to be called Matagorda Island State Park and Wildlife Management Area.

Essentially, and effectively, Matagorda Island will no longer be part of the refuge system.

It will be managed by the Texas Parks and Wildlife Department for the next 100 years. It will become a Texas State Park, subject to various State regulations.

Most disturbingly, the State of Texas has been required by State law to administer the newly created State park on Matagorda, until April of this year, "primarily for public recreational purposes."

Now, as has been mentioned here, more recent Texas State legislation has modified the agreement and has made recreation a co-purpose with wildlife. In contrast, the National Wildlife Refuge System Act mandates the supremacy of wildlife conservation over recreational uses on refuge lands. It is this type of State-Federal conflict in wildlife conservation goals that makes joint administration unfeasible.

Proponents argue that the agreement allows for integrated management of the State and Federal lands on the island and, therefore, there will be better management of the wildlife resources. This is a terribly specious argument, however, and at this point, I would like to use the map in maybe giving you a better overall understanding of the resource.

As you can see from this map, the actual ecosystem that the whooping crane occupies is obviously not limited to Matagorda Island.

Senator SYMMS. Can you summarize? I just want to tell you we have got more witnesses waiting.

Mr. PARCELLS. I will do that.

The point that is made by this map is that the State lands is a slice between two portions of Federal land. When you talk about integrating management in this case, you should talk about the ecosystem that is within the whole Matagorda Bay, Matagorda Island or Aransas estuarine area.

The concept of integrated management breaks down evern further. The Texas Parks and Wildlife Department intends to have four different agencies on Matagorda Island: That is, the Texas Parks Department, the Wildlife Management Department, the Law Enforcement Department, and the Fisheries Department. The coordination of these agencies with their different missions on Matagorda Island is not at all clear. Delegation of day-to-day management by the U.S. Fish and Wildlife Service to the State of Texas is not an intergrated management strategy.

The memorandum of agreement will actually fragment management.

Senator BENTSEN. Will the gentleman yield on that?

Aren't you talking about divisions within the Texas Parks and Wildlife and not separate departments all under one administration?

Mr. PARCELLS. It is my understanding that there is no clear coordination between these four agencies.

Senator BENTSEN. I am sure that statement will come as quite a shock to them and to the administrator.

Mr. PARCELLS. I am sorry? I didn't hear your question.

Senator BENTSEN. I just happen to disagree with your statement. Go ahead.

Senator SYMMS. What he said was that will come as quite a shock to the Texas department to find out that they don't know each other and they are not coordinating since they feel that they are.

Mr. PARCELLS. Well, I am sure that it does not come as a shock to those people who have watched the interaction of the various divisions within the department over the years, and it is my understanding that oftentimes there is a fair amount of disagreement between the various divisions.

All I am trying to point out, though, is that what has been stated here today by the administration and Texas Parks Department is that they are looking for integrated management, and by doing that, we would give management totally to the State of Texas.

What the memorandum of agreement is actually doing is fragmenting management on the refuge.

I have just a little bit more to go here.

Senator SYMMS. OK, please try to wrap it up.

Mr. PARCELLS. The goals set forth by the State of Texas for managing Matagorda Island not only appear to be consistent with the Refuge Administration Act and the Migratory Bird Act, but do not appear to be inconsistent with the goals for whooping crane recovery either.

Dr. George Archibald of the International Crane Foundation has pointed out that Matagorda Island has three times as much potential for whooping crane habitat as does the Aransas Refuge on the main land of Black Jack Peninsula.

The development of Matagorda Island along directions proposed by the State of Texas could impede the expansion of the crane population into Matagorda Island habitat and, therefore, frustrate whooping crane recovery.

Let me make this my final point. What you are effectively seeing is the expansion of a whooping crane population at the same time that you are experiencing higher numbers of recreationists coming to Matagorda Island.

What the State is effectively saying is that we will provide increased facilities for recreation. Facilities attract people.

However, scientists and wildlife biologists, who have studied the whooping crane, realize that isolation, freedom from human intrusion, is an incredibly important ingredient to the recovery of the whooping crane.

It is curious to me that at this juncture, there is a request by the Texas Parks and Wildlife Department for Federal aid to the amount of $490,000 over the next 5 years to develop Matagorda Island for increased recreation, for increased human activity at a time at which we are trying to protect the whooping crane.

Thank you, very much.

Senator SYMMS. Thank you, very much.

Senator Bentsen?

Senator BENTSEN. Yes, if I might comment. I note in your statement a quote from Congressman John Dingle, and the quote is used for the purpose of trying to discredit this piece of legislation.

The quote is out of context, and I think it is quite interesting to note that Congressman John Dingle is a cosponsor of this piece of legislation.

Senator SYMMS. I have known and worked with John Dingle for many years, and, I, without knowing, would have guessed that he would have cosponsored, because this bill, I think, does point toward conservation, and that is what he is noted for.

Mr. Parcells, I must take exception with two points that you made in your written statement, and I want you to know I am speaking for myself, but also I am speaking for the chairman of this subcommittee who could not be here at this time. You state that, explicit in the legislative directives are the principles that wildlife preservation is of the utmost national importance.

I think that choice of words is, at least, unfortunate, but even though it is unfortunate, it certainly is inaccurate, because I think a correct statement would be to use the word "conservation" and not "preservation."

By law, our refuges are managed for multiple use, and this includes hunting, fishing, and many other legally sanctioned activities that are inconsistent with preservation but perfectly compatible with conservation.

You also contend the legislation——

Mr. PARCELLS. Could I interrupt you after each question, or would you like me to respond after all of them?

Senator SYMMS. Let me just finish my statement.

If you wish to comment on them, you can.

You also contend legislative directives embrace the principle that the Federal Government is uniquely suited to be the public agency with direct responsibility for the stewardship of our wildlife resources.

To this extent, you are implying that the Congress has exerted primacy to the certain agencies? Nothing could be further from the truth. Even the Endangered Species Act provides for a major State role in wildlife management.

Did you want to make a comment on that?

Mr. PARCELLS. Most certainly.

I personally don't think that you would have much agreement on your statement that national wildlife refuges are to be managed for multiple use.

Clearly, within the statutes, wildlife is the dominant use for the purposes of management.

Senator SYMMS. But there are other uses is the point.

Mr. PARCELLS. You always have to be compatible for the purposes for which that refuge is established.

Now, granted, you can have other uses of refuges, but in all instances, those uses must be compatible with the purposes for which the refuge was established, and that is clearly not the case in this agreement.

Senator SYMMS. I disagree with the stridency of the way you put the position, because I think that we interpret the law that conservation truly is the goal.

I might just go on further and say your statement talks about the disposal of refuge lands, and that is not what this agreement is about.

In fact, lands are added to the refuge system.

Mr. PARCELLS. Can I follow up on that?

Senator SYMMS. You say the Interior Department has the exclusive responsibility for protecting all migratory birds and their habitat.

What about the work that is done by the States, nature conservancy, the Audubon Society?

Wildlife management is not, cannot, never will be, the exclusive responsibility of the Federal Government. It is just is my opinion, as I see it. We have enough trouble with the Federal Government trying to manage some of the other things that are clearly Federal responsibilities.

But to leave an exclusiveness for wildlife management to the Federal Government, I personally think, would put wildlife management at a great risk.

Mr. PARCELLS. Mr. Chairman, I am in almost complete agreement with you. I don't want to come across as being strident. I am trying to come across as being firm.

What my intentions here are are to express the fact that the National Wildlife Refuge System is a unique system There, of course, are many vehicles to be used in the protection of wildlife in this country. Obviously, the States have played an instrumental role.

Defenders of wildlife and these organizations are in no way against cooperative agreements between the States and the Federal Government. There has to be that cooperation in the protection of our wildlife.

What I am stating here, though, and pretty specifically, is that what you have in this agreement by giving the management authority over to the States for the next 100 years is an agreement that is tantamount to the disposal of that land and one in which you are—where you are sacrificing a stronger criteria for the protection of the species and wildlife and giving the authority over to the State.

Senator SYMMS. I think you make your case for your point of view, although I may not share that point of view. I appreciate your willingness to come here and make your case, and you certainly should be entitled to do that.

Let's hear from Mr. Eno. Welcome to the committee.

STATEMENT OF AMOS S. ENO, DIRECTOR, WILDLIFE PROGRAMS, NATIONAL AUDUBON SOCIETY, ACCOMPANIED BY KEN BERLIN, COUNSEL

Mr. ENO. Thank you.

I am Amos Stewart Eno, director of wildlife programs of the Audubon Society. I also have with me Audubon's counsel, Mr. Ken Berlin to answer any legal questions that might be addressed.

With the chairman's permission, I would like to insert my entire statement in the record.

Senator SYMMS. Without objection, that shall be inserted into the record.

Mr. ENO. I shall skip over the first eight pages of my testimony, which details Audubon's over 70 years' experience in protecting the

whooping crane and conserving wildlife resources on the Texas coast.

Suffice it to say, Audubon wrote the book on whooping crane conservation, and we add new chapters virtually every year.

I shall also skip over the details of the agreement and the enumeration of the stipulations which Audubon negotiated into the agreement.

If you have any questions, I shall be happy to come back to any of these points in my testimony.

I would also at this point like to thank Chairman Bass for the very considerable role he has played in bringing about this agreement.

I shall go directly to the middle of page 9, that part of my testimony which addresses the points raised by the opponents of this agreement.

It is Audubon's view that the agreement clearly benefits the whooping crane and other endangered species present on the island because it insures the long-term protection of wildlife habitat on the island.

In essence, the agreement provides a "best of both worlds," situation with all public lands on the island coming under the legal protection of the National Wildlife Refuge System and with the State of Texas providing substantial increases in funds and personnel for the protection and management of wildlife on the island.

Our critics remonstrate that we should have added the State lands as part of Aransas National Refuge without providing Texas any management role on the Federal lands.

As already stated, this is exactly what three successive Republican and Democratic administrations, not to mention the Audubon Society, have unsuccessfully tried to accomplish in the past.

As a native son and with due respect to Representatives of Texas here today, I feel compelled to observe that there is nothing more stubborn than a Texan nor any task more difficult than trying to make a Texan do what he doesn't want to do, particularly when it comes to giving up his land.

Throughout its history, Texans have accorded a very special attachment to their public lands. For well over a decade, a sucession of Texas Governors have adamantly refused to turn over their State lands to the Fish and Wildlife Service for inclusion as part of the refuge system.

The Texas position has been unyielding, and for good purposes, as Chairman Bass cited: Because the lands are General Land Office lands.

They have refused to let the land be included in the refuge system without at least the quid pro quo of this agreement.

In the past year, Audubon spent considerable time and effort contacting various State leaders, and regardless of party affiliation, they indicated unanimously that no such agreement would be possible in the foreseeable future.

We further confirmed that newly elected Governor White is a strong supporter of the Matagorda agreement and is opposed to the State turnover of lands without the agreement before us.

During hearings in the House, opponents of the legislation asserted that the Federal lands have been, and I quote, "Given to the State" and that "Matagorda is no longer a wildlife refuge."

I think a quick reading of the agreement will demonstrate that the 19,000 acres of Federal land remain, in fee title, a part of the refuge system, and for the first time, the 24,000 acres of State lands are also protected by the National Wildlife the Refuge Act and the regulations promulgated under that act.

Ratification of the legislation before us removes any shadow of a doubt over the inclusion of the lands in question in the refuge system. As Congressman Dingell stated in the Congressional Record, and I quote, "The bill sets a clear congressional policy that the Federal refuge lands now if the system shall stay in the system and be subject to the laws applicable thereto, regardless of any action by the Interior Department."

Second, opponents assert that the agreement "erodes protection of the very lands needed for the expansion and restoration of the endangered whooping crane."

This assertion ignores the most important feature of the agreement: It extends Federal protection to the State lands that contain the critical whooping crane wintering grounds, and this benefit is achieved without compromising the Federal lands, for the agreement contains safeguards to insure continued enforcement of Federal law on those lands.

To better understand how erroneous our opponent's assertion is, allow me to turn the statement on its head and ask, What does the agreement provide as far as protection to the whooping crane that was not present beforehand?

For the first time, it provides for the application of all Federal statutes and regulations to the State-owned lands.

Second, it provides increased law enforcement protection.

Third, it provides active management of both Federal and State areas for the first time in over a decade.

Finally, opponents allege that the agreement is contrary to the intent of the Refuge Administration Act because it authorizes State management on a national wildlife refuge. Regarding our opponent's point this morning on split jurisdiction, I don't believe we live in a would of absolutes. The circumstances of this agreement are considerably different from those cited.

In fact, I would argue that there is no split jurisdiction as the Fish And Wildlife Service retains all legal jurisdiction and supervision responsibilities.

Regarding the point about irrefutable differences that Mr. Parcells highlighted, we tried to and I believe succeeded in preventing these differences from arising by dealing with them directly in the agreement.

As to his second point as far as the impact of the potential recreation, I refer the committee to the grant of easement by Texas to the United States, which contains an implicit provision that the State shall not conduct or authorize the conduct of any recreational activities which interfere with and are not compatible with the primary purposes for which the lands are included in the refuge system. The exact same standard is in the Refuge Act.

It always is and always has been Audubon's position that to resolve conflicts over the legality of the agreement and to insure that exchanges are not entered into without adequate public review, the agreement should not go into effect unless it is specifically authorized by an act of Congress.

For this reason, Audubon also supports Senator Hart's bill, S. 1232, amending the exchange provision of the Refuge Administration Act, requiring congressional approval of most exchanges.

However, the legislation before you is fully consistent with the provisions of the Hart bill, and in order to provide immediate protection of wildlife resources on Matagorda, we strongly recommend that the two bills be considered separately.

In our opinion, those groups that have chosen to oppose the Matagorda agreement in courts and now in Congress are sacrificing the valuable practical benefits the agreement affords because they incorrectly believe it sets a bad precedent for future, unrelated actions.

We believe, however, that as the House Merchant Marine and Fisheries Committee explicity stated, the Matagorda situation is unique. And we believe that as long as each exchange is separately considered by Congress, there is little danger of setting the kind of precedent feared by opponents of this exchange.

Where Audubon opposes an exchange, such as the one proposed for St. Matthews Island in Alaska, we will vigorously oppose both it in the courts and in Congress.

In conclusion, to best understand the allegations of opponents, it is appropriate to understand what this agreement does not do. It does not lessen the protection afforded the whooping crane. It increases protection by bringing State lands under the jurisdiction of the Refuge System and all Federal wildlife protection statutes.

It also increases the law enforcement presence on the island four or five times over.

It does not represent a giveaway of refuge lands. The agreement enhances the refuge system by bringing into the system 24,000 acres of State lands, which is more acreage than Secretary Watt has added to the system in almost 3 years.

And under the agreement, the Federal lands become fee title a part of the refuge system for the first time.

Finally, the agreement does not undermine the concept envisioned by the founders of the refuge system and is not contrary to the intent of Congress.

On the contrary, the agreement provides today's protectors of the Refuge System with standing to sue against incompatible activities and with the passage of this legislation, Congress' imprimatur will be clear and lasting.

I will skip the next paragraph.

The Matagorda agreement ratified in S. 696 provides essential protections for the resources we have sought to preserve, without establishing any precedent for degredation of other areas.

Legislation would secure the benefits offered by this agreement and insure that the agreement is not utilized as a general precedent for any less meritorious future Federal-State land dispositions.

Mr. Chairman, the remainder of my testimony deals with two other bills before you, H.R. 1723 and S. 1271.

Do you want me to continue?

Senator BENTSEN [presiding]. We will take those for the record at this time.

Let me state that I think your statement is very clear, and you have gone down each of the points that have been in contention.

As a native Texan, I must agree to getting awfully stubborn when you are talking about Texans as someone who was quite a negotiator and who was talked into giving over a 24,000-acre easement in Texas to public lands, and then in turn, looking at this agreement here, the terms and conditions of the easement, that they cannot conduct in any way that which would not be compatible with the primary purposes for which the lands are included in the National Wildlife Refuge System.

So I congratulate those who have been able to bring about this kind of a joint effort to try to protect our wildlife resources.

I am very pleased to see Senator Durenberger is here, who was attending another committee.

Senator DURENBERGER. You are still the Chair.

Senator BENTSEN. I have a number of questions that I will put into the record because we have other witnesses testifying on matters other than Matagorda this morning.

Thank you, very much.

We have with us this morning Ted and Francoise Gianoutsos and Elaine Mellott, legislative chairman of the Friends of the Valley. I am very pleased to have Senator Durenberger to be with us this mroning, I believe, to introduce Elaine Mellott.

STATEMENT OF HON. DAVID DURENBERGER, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator DURENBERGER. Thank you very much, Mr. Chairman. I am here for a couple of reasons: One, I am probably in the unusual situation this morning where not only am I able to thank the chairman of this committee and thanking you—I know you would like to be down with the rest of us on the Finance Committee dealing with the tax credit—but thank you for the opportunity to have this hearing on H.R. 1723.

But also I am here as one who has been involved with the Minnesota Valley National Wildlife Refuge almost from its beginning. I can testify that compared to the person sitting at my right, I had little to do with the initiation of the bill, and she and a couple of her colleagues had everything to do with the initiation of the original authorization.

I am also somewhat involved because I served for some period of time as Chairman of the Twin Cities Metropolitan Area Parks and Open Space Commission. I was deeply involved in the authorization and appropriation of what is now some $7 or $8 million worth of funds into a regional park system in that metropolitan area. I also served a couple of terms as chairman of the Hudson County Parks Reserve District which owns a wildlife refuge which is, in effect, included in part and hopefully will be included wholly in the boundaries of the Minnesota Valley National Wildlife Refuge.

We are especially grateful for the committee action last week which put this bill on the Senate Calendar. The House has already

passed a bill and the swift action of this group which gives us hope that the good Friends of the Valley right here in the Congress will be successful in making the refuge a reality. The Minnesota Valley is an important national resource to the people of my State. It lies within the Minneapolis-St. Paul Twin Cities area, where over 2 million or more than half of people in Minnesota reside. Yet it includes a diverse wildlife habitat that is supported by an abundance of bird and fish species that are not normally found in a metropolitan area of that size in this Nation.

The refuge status, combining the values of protection and access for this area, is an immensely public undertaking which has and will enrich the lives of tens of thousands of Americans over the years. Although I am here to praise the bill and to thank the chairman of the subcommittee for the efforts, I would ask that he respectfully consider two or three amendments not included in the House language.

The revenue has been authorized for many years. We have had little success with land acquisition and development. Because of the uncertain schedule for future appropriations, I would ask that the appropriations for both land acquisition and development be appropriated and that the funds will remain available until expended.

Second is the matter of boundaries of which I speak at the commencement of my statement. The original land acquisition is appropriated for a land area of 9,500 acres, although the Secretary of the Interior said that would burden the area of the refuge. Since the origination, a master plan of the refuge has been completed and approved by the Secretary of the Interior. This plan suggests a total planned area of approximately 12,400 acres. Considering the policies of this Secretary, I would think it would be in the best interests of that valley if we included the specific boundaries identified by the master in the bill we eventually adopt.

Third, if the land areas is increased to 12,400 acres, we still need a slightly larger authorization for land acquisition; not much larger, only slightly larger, because much of the land that would be included under revised boundaries are already held by State or local government.

One final substantive matter, Mr. Chairman: Current policy at the Interior Department requires that the Fish and Wildlife Service minimizes the Federal role of the management programs like this refuge. This is the so-called leased interest policy, I believe.

Under this policy, Fish and Wildlife is negotiating cooperative agreements with local governments to manage the lands within the refuges where title is held by local government. It is my understanding that if the State or local government wanted to donate the land to the Federal Government instead of signing a cooperative agreement, Interior might actually refuse the donation under this leased interest policy. That, to me, Mr. Chairman, is wrong.

We are not going to ask for compensation for local governments which want to donate land, even though my colleagues on the park reserve district that I used to chair would like to see them. But we should require that Interior accept any donations within the boundaries of the refuge if it is offered.

My final task, Mr. Chairman, and a very pleasant one, I would like to introduce Elaine Mellott to the committee. She is a Friend to the Valley and a long-time member and I know the original foundation of the citizens group of that name. I have read her testimony, Mr. Chairman, and it is an excellent statement of the concerns that have brought scores of Minnesotans into the effort that I am confident will see the Minnesota Valley National Wildlife Refuge to completion.

Senator CHAFEE. Thank you, Senator Durenberger, Mrs. Mellott. We welcome you here. Do you have a statement?

STATEMENT OF ELAINE MELLOTT, FRIENDS OF THE MINNESOTA VALLEY WILDLIFE REFUGE

Mrs. MELLOTT. Yes, Mr. Chairman, members and staff, I would like the entire written statement in the record.

Senator CHAFEE. We definitely will do that.

Mrs. MELLOTT. I am representing the Friends of the Minnesota Valley National Wildlife Refuge this morning. I would like to say that this National Wildlife Refuge is very important to the State of Minnesota and a very popular project within the State and the urban area. It is along a major river corridor. The marshes in that river corridor are considered unique in the world and written about by Dr. Paul Errington, the University of Iowa, who spoke to their high productivity of wildlife—especially furbearing animals and birds—their unusual geological characteristics, and the ecological benefits to the area in supplying fresh waters.

I would like to ask that the committee consider and approve the points to which Senator Durenberger has spoken; that you would consider increasing the boundaries of the refuge to incorporate some natural water areas that were split out because of political boundaries in the original legislation. Those political entities now wish to have those wetlands included. The boundary increase also includes areas of orchid fens that are unique in the United States because of their size and unique plant communities.

I would like very much to——

Senator CHAFEE. What is an orchid fen?

Mrs. MELLOTT. A fen is an area of land that is actually held or raised up in the center because so much low pH fresh water is flowing through it. The artisan activity in the valley actually raises the land, and supports a unique community of plants and some wildlife. That is the opposite of a bog in water pH content.

Senator CHAFEE. Thank you very much, Mrs. Mellott, Senator Durenberger, a very valuable member of this committee, has been active in this project, and we will all work together with some amendments.

I understand the legislation is already on the floor, and with Senator Durenberger's able assistance, we can present some amendments. This sounds like a very worthwhile project. You are preaching to the choir when you talk about wildlife refuges to this committee, so we thank you for coming on and lending your valuable support to this project.

Mrs. MELLOTT. Thank you for hearing me, Senator Chafee and Senator Durenberger. I want you to know how much we appreciate your commitment to preserving the environment.

Senator CHAFEE. That is nice.

Senator DURENBERGER. I didn't tell her to say that.

Senator CHAFEE. That won't lose her any support.

Mrs. MELLOTT. Thank you.

Senator CHAFEE. Now Mr. and Mrs. Gianoutsos. If you could come forward?

Excuse me. Senator Symms has a comment.

Senator SYMMS. My comment is about Mr. and Mrs. Gianoutsos, and I just wanted to say, Mr. Chairman, I have another committee meeting to go to now, but I want to personally thank you two for your interest and your generosity for wildlife management. I think generosity and intention is when somebody puts their money where their mouth is. I think there can be no finer compliment. I certainly want to thank you on behalf of those of us who like to hunt ducks and things like that.

I am a member of Ducks Unlimited, and we think you do a lot of good for wetland development. I congratulate you for it.

Dr. GIANOUTSOS. Thank you, Senator.

Senator CHAFEE. I want to join in that and of course, they are doing their part. Now it is up to us to do our part.

Senator SYMMS. I don't actually hunt ducks, I just like to talk about it.

Senator CHAFEE. All right.

If you would proceed, Mr. and Dr. Gianoutsos, in any way you want to proceed?

Do you want to proceed first, Dr. Gianoutsos?

STATEMENT OF THEODORE AND FRANCOISE GIANOUTSOS

Dr. GIANOUTSOS. Yes. We have a statement that we would like to make, and I will read it on behalf of both of us.

Senator CHAFEE. All right, fine, we will put that in the record, and if you want to excerpt it, proceed in any way you want.

Dr. GIANOUTSOS. Fine, thank you, very much.

First of all, I would like to thank very much Senator Chafee, Senator Mitchell, and Senator Symms for their very kind words to us.

We appreciate that.

Mr. Chairman and members of the committee, it is a great honor and privilege for us to be here today to testify in behalf of your recently introduced legislation to establish a U.S. Fish and Wildlife Foundation.

We would like to briefly describe, to you and the committee, our interest in seeing such a foundation created.

Mr. Chairman, we share the immigrants love for America, principally because Ted's parents are Greek immigrants to America and Francoise herself is an immigrant from France.

Over the past 20 years of our marriage, we have often remarked at how fortunate we are to be able to enjoy the many benefits and opportunities which our country affords us. As we have matured, we have come to realize that with those benefits and opportunities

come responsibilities, and there comes a time when one should, in President Kennedy's words, "Ask not what your country can do for you, but what you can do for your country."

In truth, America has been very good to us. We had the opportunity to earn several university degrees, thanks in large part to Government loans and grants of one type or another.

We have prospered and live a relatively very comfortable life. Many times over the past several years, we have asked ourselves, what can we do to help our country. Several events of 1982 crystalized our thoughts and motivated us to act. We suffered two deaths in the family, Francoises' mother and great-uncle passed on closely following the death of her father who died 3 years ago, our brother-in-law, only 7 years older than we, suffered a massive heart attack, and finally we were run off the road at high speed by an oncoming truck and were brought face to face with our own mortality.

Realizing that the remaining members of our family were relatively well off and have no children, we focused our attention on our estate.

Mr. Chairman, our greatest pleasure in life is to be out in the woods and fields. We are both avid outdoor people and particularly enjoy hunting, fishing, and training bird dogs, currently two labradors. We spend every spare moment in dog training or hunting or fishing or photographing wildlife or walking in the woods or just lying in some field watching the grass grow. Fish and wildlife conservation is, therefore, the area in which we have chosen to make our contribution. We became aware of the Department of the Interior's mission and especially that of the Fish and Wildlife Service through Ted's association with Interior over the last 5 years. We have developed a great respect and affection for the Department of the Interior, and the more we learned about the Fish and Wildlife Service's programs, the more we became convinced we could and should help.

In January, of this year, we asked our friend and attorney, Pat O'Connor of O'Connor and Hannan to help us redraft our wills and establish a 30-year testamentary trust for the benefit of the U.S. Fish and Wildlife Service.

Our wish is to have the bulk of our estate invested in 30-year U.S. Treasury securities with the interest to be annually given to the service for use in their programs of hunter education, ethics, and safety and recovery of endangered species, particularly raptors.

At the end of the 30 years, the principal will also be given to the Service, and, thus, over the course of 30 years, several million dollars will be made available for these important programs.

During the course of meetings at Interior with our attorneys, Interior attorneys and program people, it became apparent that although Interior and the Service had gift authority, no mechanism existed, other than the National Park Foundation—which can only by law benefit park service programs—for the reception and administration of a multiyear grant or trust.

We realized that we had inadvertently been presented with an opportunity to be of more immediate use to the Fish and Wildlife Service by acting as the catalysts for the creation of a U.S. Fish and Wildlife Foundation.

We decided to meet the challenge and assume the responsibilities of championing the Foundation's cause. We have been enthusiastically and warmly supported and encouraged by many professionals with the Fish and Wildlife Service and especially by Director Jantzen and Assistant Secretary Arnett.

There was no need to search very far for someone to introduce such legislation in the Senate. Mr. Chairman, you were the natural choice. Your enthusiastic response and the most generous contribution of your time and efforts, and that of your staff to draft, introduce, and hold hearings on this legislation, are greatly appreciated by us and will not be forgotten. We thank you for being so accessible and so willing to help.

This Foundation can and should be a focal point for those citizens and organizations who want to help the service in its important work. Indeed, if the foundation had existed when DuPont made its generous multiyear grant to the Service for the eagle recovery program, two-thirds of the grant could have been invested to earn interest and this interest would have increased the grant and would, therefore, have benefited the eagle program that much more.

The Foundation could also allow individuals to become involved in a sustaining and ongoing manner, through some sort of associates program, with fish and wildlife programs.

In this regard, we would welcome the opportunity to participate in such a program and would look forward to making a grant, of several thousand dollars each year, to the Foundation for use in fish and wildlife programs.

Additionally, in order to see the Foundation started on a sound financial footing, we have already made available a $5,000 check, entrusted to the care of the Secretary of the Interior until the Foundation is established, to be used as seed money.

We hope that other citizens will join us in providing seed money, grants or requests to the foundation so that it may thrive and foster cooperation between the private and public sectors and citizens and their government and thus carry out together the important work of conservation of the fish and wildlife resources of America.

In closing, Mr. Chairman, we would like to take this opportunity to thank all those who have demonstrated an interest in this legislation and helped us in our commitment to it; especially Pat O'Connor and Brian Phelan of O'Connor and Hannan, Brian Cole and Russ Fielding of the U.S. Fish and Wildlife Service, Steve Shimberg and Martha Pope on the subcommittee staff, and, of course, our many friends in the Senate who have agreed so enthusiastically to support and cosponsor this legislation.

We also want to take this opportunity to once again thank all of our friends in the House where this legislation was first introduced as H.R. 2809 on April 28 by John Breaux, chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries.

H.R. 2809 has wide bipartisan support and is cosponsored by more than 24 members.

We sincerely thank all of you for your help and encouragement.

Senator CHAFEE. Well, thank you very much, Dr. Gianoutsos.

Dr. GIANOUTSOS. Mr. Chairman, if I could just have one more minute, I was going to say, Mr. Chairman, that I am finished now with our prepared statement, but there is just one thing I would like to add personally in my own name, if I may.

Senator CHAFEE. Sure.

Dr. GIANOUTSOS. In my native country, France, there are many political parties, as you know, each very narrow in spirit and philosophy, and they, therefore, seldom rise above partisan concerns.

I want you to know how proud and happy I am to see firsthand that here in America, on an issue such as this, members of both national parties were equally enthusiastic in their support for this legislation.

As an immigrant and a Democrat, I want to thank you, Senator Chafee, and tell you that I deeply appreciate your warm support, and I will never forget it.

Senator CHAFEE. Thank you, very much, Dr. Gianoutsos. That is very kind.

Mr. Gianoutsos, do you have anything to add to that?

Mr. GIANOUTSOS. No, sir. I fully and completely agree with what this wonderful and beautiful lady has just said.

Senator CHAFEE. I won't argue with any of those statements.

Now, here is the situation: Obviously, we are anxious to move along with this legislation as quickly as we can.

What we have got to look into is the best vehicle, as you know, and whether the Park Foundation model is the correct model.

But I want to assure you that we are not going to waste time. We want to get on with it and have something that is really going to work out for everybody concerned, for you, for future donors or those who will be administering it, and, then, finally, of course, for the benefit of the beneficiaries, which is, of course, the safety training that you mentioned and the preservation and enhancement and encouragement of supporters.

Again, let us thank you. You have been very patient, and I assure you we will press right along.

Dr. GIANOUTSOS. Thank you.

Mr. GIANOUTSOS. Thank you.

Senator CHAFEE. Thank you. You were nice to wait.

All right, that wraps it up.

I thank everybody for coming.

[Whereupon, at 11:28 a.m., the subcommittee was recessed, to reconvene at the call of the Chair.]

[Statements submitted for the record and the bills being considered follow:]

STATEMENT OF J. CRAIG POTTER, DEPUTY ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION, COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, ON H.R. 1723, TO AUTHORIZE APPROPRIATIONS FOR SEVERAL NATIONAL WILDLIFE REFUGES; S. 696, TO RATIFY AN EXCHANGE AGREEMENT CONCERNING NATIONAL WILDLIFE REFUGE SYSTEM LANDS LOCATED ON MATAGORDA ISLAND IN TEXAS; AND S. 1271, THE UNITED STATES FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT.

MAY 19, 1983

Mr. Chairman, it is a pleasure to appear before you this morning to discuss several bills of interest to the Fish and Wildlife Service.

H.R. 1723 as passed by the House would extend for three years, and in some cases increase, the authorization of appropriations at the San Francisco Bay, Great Dismal Swamp, and Minnesota Valley National Wildlife Refuges. We support extension of these authorizations, and recommend an amendment to extend such authority until funds are expended. This will provide the flexibility necessary to protect and enhance management of these refuges in the context of other fiscal concerns and national budget priorities.

However, we do not support increasing the authorization levels at this time. Appropriated funding has not reached the authorized levels; in some instances, actual appropriations to date are far short of authorized ceilings. Any increases should be considered only as we reach current authorized ceilings, and then only after all alternatives, such as acquisition by exchange or donation, have been evaluated. We therefore recommend an amendment to delete the increases from the bill.

Let me emphasize that the effective operation and maintenance of what we now have within the refuge system is a very high priority of this Administration. The

rising costs of materials, supplies, labor and energy have led to a prolonged deferment of needed maintenance at most refuges. The result has been accelerated deterioration of facilities and equipment with subsequent adverse impacts on habitat and wildlife. To address this situation we are proposing to increase refuge operation and maintenance funds in fiscal year 1984 by $14.6 million over the fiscal year 1983 appropriation to undertake a new initiative, known as Accelerated Refuge Maintenance and Management (ARMM). This initiative includes a request to increase maintenance funding at each of these three refuges by an average of 30 percent.

San Francisco Bay National Wildlife Refuge

Public Law 92-330 (16 U.S.C. 668dd; 86 Stat. 399), which authorized the Secretary of the Interior to establish the San Francisco Bay refuge, provided for an authorization of appropriations of $9 million for land acquisition and $11.3 million for development. This authorization expired at the end of fiscal year 1977 and was extended through fiscal year 1980 by Public Law 95-299 (92 Stat. 341). In 1980, Public Law 96-290 (94 Stat. 607) increased the authorization for land acquisition to $13.2 million and extended it through September 30, 1983. At that time, the sum authorized for development of the refuge was made available until expended.

H.R. 1723 would extend the authorization for acquisition until September 30, 1986. We support extension, but urge that this funding authority be made available until expended.

To date, $11.6 million has been appropriated for acquisition of the refuge and 16,700 acres have been acquired. Twenty-one tracts, totalling 1,475 acres, remain

to be acquired and nearly 5,000 acres of submerged lands will be leased from the State.

The tidal marshes, mudflats, sloughs and open waters of the refuge are vital components of the San Francisco Bay ecosystem. Complementing these natural habitats is a vast system of solar evaporation salt ponds. Approximately 9,000 acres owned by the Service are still operated for production of salt by the Leslie Salt Company; management rights will revert to us when these salt-making operations cease. Together, these habitats support a rich abundance and diversity of fish and wildlife resources.

The refuge is a major migrational staging and wintering area for waterfowl and shorebirds of the Pacific Flyway. Millions of shorebirds, comprising about seventy percent of the shorebirds of the Pacific Flyway, stop over to rest or feed in the Bay area during spring and fall migrations, and about 80,000 ducks and geese winter there.

The importance of the salt ponds to migratory bird populations is only now becoming fully known to the scientific community. Due to the tremendous quantities of invertebrates produced in these ponds, some species of waterfowl, shorebirds and other water birds now seem to use them in great numbers; in fact, species like the western snowy plover, black necked stilt and American avocet have greatly expanded their breeding ranges to take advantage of this salt pond habitat.

The California clapper rail, California least tern, brown pelican, red-bellied salt marsh harvest mouse and peregrine falcon are all endangered species and all are

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provided habitat and protection by the San Francisco Bay refuge. If the loss of wetlands around San Francisco Bay continues at the current rate, the refuge will contain the only viable remaining nesting habtiat for the California clapper rail and the red-bellied salt marsh harvest mouse in the future. The refuge also protects the feeding, haul out and pupping area for the largest colony of wary harbor seals in San Francisco Bay.

In addition to conserving important wildlife species and their habitats, the refuge provides a much needed wildlife-oriented public use area and extensive interpretation and education programs to inform the residents of and visitors to the region of the importance of the San Francisco Bay estuary in maintaining fish and wildlife resources. Because the refuge serves an audience of extremely varied educational backgrounds and attitudes, the scope of the interpretive and environmental education programs has to be very diverse. The centerpiece of our educational program at the refuge is the Environmental Education Center (EEC) located in the Alviso district of San Jose, a predominantly Spanish-speaking community. The center offers teachers and students two classrooms, an auditorium, a library, observation tower, and an assortment of teaching aids and equipment. The interpretive center and headquarters building, located some 15 miles from the EEC in Newark, is an important resource for birdwatchers, photographers, and other wildlife observers. It provides displays, guest presentations, special events and publications for the general public throughout the year.

In addition to these facilities, approximately 18 miles of trails and roads are in use on the refuge. Fishing opportunities are provided and hunting is allowed in most of

the tidal areas under lease from the State. A plan to open other select salt ponds, marshes and tidal sloughs within the refuge to compatible waterfowl hunting was recently developed in close consultation and coordination with several groups including the California Waterfowl Association, California Department of Fish and Game, three local chapters of the National Audubon Society and the Leslie Salt Company.

Approximately $3.7 million has been appropriated for development at this refuge. In fiscal year 1984 we are requesting an appropriation of $105,000 to construct visitor contact stations, rehabilitate public fishing access facilities and make other improvements to accommodate an increasing number of visitors.

While technically not an issue for reauthorization, as I pointed out earlier, we are also requesting an increase in maintenance funding for this refuge of $275,000, raising the total to $834,000. This will help provide such fundamentals as road and roof repair.

Great Dismal Swamp National Wildlife Refuge

The Great Dismal Swamp, located in Virginia and North Carolina, is a large forested peat bog with Lake Drummond at its center. The area supports a remarkably diverse collection of fish and wildlife species, including the only breeding population of black bears in eastern Virginia. It also provides habitat for a sizable deer population, bobcats, and numerous smaller mammals. About 75 species of birds are known to nest in the swamp and many other migrating birds stop over or winter there.

The Act establishing the refuge provided an authorization of $7 million over 3 years for acquisition and management of the refuge. In 1978, Public Law 95-299 (92 Stat. 341) authorized $15.75 million for land acquisition and $5.35 million for development, to be available in fiscal years 1978 through 1980. A further amendment by Public Law 96-291 (94 Stat. 608) extended this authorization of appropriations through fiscal year 1983.

H.R. 1723 would increase the acquisition authorization to $22 million and the development authorization to $12.1 million. We oppose these increases and, as I have stated earlier, urge that the present authorized levels be made available until expended.

Appropriations for land acquisition from fiscal year 1978 to the present have totaled $10.84 million, leaving almost $5 million still available under the current authorized ceiling. Approximately 102,244 acres have been acquired for the refuge, including a 50,000 acre donation by the Union Camp Company and an 11,000-acre donation from the Weyerhaeuser Corporation. A land protection plan for this refuge is scheduled to be completed in August 1984 and will evaluate means, in addition to full fee acquisition, of protecting the acreage necessary to preserve the integrity of the swamp. Any increase in the authorized acquisition ceiling should be considered only in light of this land protection plan.

Water control is currently our highest management priority at this refuge, and is necessary both to alleviate hazardous fire conditions and to maintain the character of the swamp. Since fiscal year 1978, $1.9 million has been appropriated for refuge development. These funds have been used largely to rehabilitate roads, purchase

firefighting equipment, and rehabilitate or construct water control structures. We have supplemented this development funding with recent increases for rehabilitation and maintenance. Under ARMM, an $83,000 increase in fiscal year 1984 maintenance funding is being requested to provide for activities such as maintenance of water control structures and boundary line posting. The jobs bill, P.L. 98-8, is also providing funding for the rehabilitation and maintenance of Service facilities. At the Great Dismal Swamp refuge, approximately $1.05 million is earmarked for additional water control structure work.

In addition to protecting an important ecosystem, the Great Dismal Swamp National Wildlife Refuge presents a unique opportunity for the Fish and Wildlife Service to work with private organizations and State and Federal agencies in a cooperative effort to provide wildlife-oriented education and recreation for the public, including hunting, fishing, hiking, boating, biking and nature photography. On the eastern boundary of the refuge the Army Corps of Engineers operates the historic Dismal Swamp Canal as part of the Atlantic Intracoastal Waterway, providing access to the refuge for boaters. The State of North Carolina also administers a 13,500 acre State Park adjacent to the refuge. On the refuge itself, Old Dominion University conducts outdoor awareness activities.

A comprehensive management and development plan for the refuge is being developed by the U.S. Fish and Wildlife Service in cooperation with the other agencies involved at Great Dismal Swamp and the public. We do not support any increase in the development ceiling until this plan is completed and we have reached the current authorized limit. Only then can we realistically estimate the

additional funding authority, if any, needed to complete development of this refuge.

Minnesota Valley National Wildlife Refuge

Establishment of the Minnesota Valley National Wildlife Refuge was authorized by Congress in 1976 by Public Law 94-466 (90 Stat. 1993). As defined by that statute, the refuge is to include approximately 9,500 acres in the lower Minnesota River Valley and is to be acquired and managed by the Secretary of the Interior. The statute also authorizes the establishment of a wildlife recreation area adjacent to the refuge. This recreation area is to be acquired, developed and administered by the State of Minnesota. The statute authorizes appropriations of $14.5 million for acquisition of the refuge-recreation area for the period October 1, 1977, through September 30, 1983, and $6 million for development of the refuge-recreation area to be available through fiscal year 1986. The legislative history indicates that Congress intended that $8.3 million of the authorized sum be used for refuge acquisition and that $6.2 million be used to match sums from the State's normal share of the Land and Water Conservation Fund for recreation area acquisition.

The lower Minnesota River Valley is located in a metropolitan area of over two million people. The presence of wildlife in an urban setting such as exists in this valley provides an exceptional opportunity for wildlife and wildlands observation, enjoyment and education for large numbers of people. While the refuge is managed primarily to protect and enhance wildlife resources, visitors are assisted in enjoying wildlife through programs and facilities specifically designed for that purpose.

The valley bluffs, lakes, and marshes provide important habitat for a wide variety of wildlife. Bald eagles have been sighted with increasing frequency around Long Meadow Lake, Black Dog Lake, Fisher Lake and Blue Lake. Thousands of waterfowl including scaup, pied-billed grebes, blue-winged teal, mallard, bufflehead, widgeon, ring-necked and wood ducks utilize the area for resting and feeding during their migrations. Other birds which frequent the area are great blue, green, and night herons; American bitterns; woodcock; and sandpipers. Raptors include sparrow, red-tailed, marsh, sharp-shinned, and rough-legged hawks. White-tailed deer use the valley continuously, with the largest concentrations occurring in winter. Minks, muskrats, raccoons, gray and red foxes, beavers, and woodchucks are some of the small mammals inhabiting the area. While fish in the shallow floodplain lakes are frequently winter killed, carp, walleye, pike, sunfish, drum, catfish, shad, and gar are abundant in the larger lakes and marshes.

The total appropriated and obligated to date for refuge acquisition is $6.7 million. Three thousand two hundred (3,200) acres have been purchased, 450 acres are publicly owned, and 1,300 acres have been leased. The land protection plan for this refuge, to examine alternatives to full fee acquisition, is due to be completed next year.

Under the current law, the development authorization is available through fiscal year 1986. To date, there has been no appropriation pursuant to this authorization. However, the Department's fiscal year 1984 request for maintenance of the Minnesota Valley refuge includes an increase of $87,000. This increase will allow us to develop a trail for the Black Dog Lake Unit, which currently has no public access, and to enhance the wetlands of the Louisville Swamp unit.

H.R. 1723 would raise the total authorization for land acquisition to $24.9 million. Although no funds have been appropriated under the existing authorization for development, it would be raised to $9.8 million. Again, we believe these increases are premature.

We have recently received a letter from you, Mr. Chairman, concerning a number of issues relative to Minnesota Valley. We will be sending a letter responding to those questions.

Matagorda Island

Let me turn to S. 696 which would ratify the exchange of conservation easements and the Memorandum of Agreement (hereafter referred to as the Agreement) between the Department of the Interior and the State of Texas concerning Federal and State lands on Matagorda Island in Texas. While we believe such legislation is unnecessary, we have no objection to its enactment.

On December 8, 1982, the General Services Administration transferred 19,000 acres of excess Federal property on Matagorda Island to the U.S. Fish and Wildlife Service. That same day the Department of the Interior acquired from the State of Texas a one-hundred year conservation easement to the United States on 24,000 acres of State tidelands and beaches for inclusion in the refuge system in exchange for a one-hundred year easement to the State on the Federal acreage. In addition, the Secretary of the Interior and the Governor of Texas also entered into a memorandum of agreement for cooperative management of the Federal wildlife refuge lands and adjoining State lands. The 19,000 acres of Federal land on the

Island will remain under the primary jurisdiction of the Fish and Wildlife Service. With the exchange of conservation easements and under the agreement, however, the entire 43,000 acres will be included within the National Wildlife Refuge System to be managed by the Texas Parks and Wildlife Department as one unit in accordance with the Agreement, Federal refuge regulations, and subsequent federally-approved operations plans.

We believe that both the exchange and the agreement are fully authorized by the National Wildlife Refuge System Administration Act. Section 668dd (b)(3) authorizes the Secretary "to acquire lands or interests therein by exchange (A) for acquired lands or public lands, or for interests in acquired or public lands, under his jurisdiction which he finds to be suitable for disposition . . ." (Emphasis added.) The Act also requires that the values of the properties exchanged be approximately equal.

It was pursuant to this authority that the Secretary acquired by exchange the conservation easement on State lands at Matagorda. The refuge system received an interest in 24,000 acres of State land, providing for the management of these valuable lands for the benefit of wildlife, particularly endangered species. The State of Texas was granted an interest in the Federal acreage on Matagorda Island for access and conservation management subject to the Agreement and subsequent federally-approved operations plans. Appraisals determined that the values of the interests exchanged were approximately equal.

The parameters of the State's management authority are set forth in considerable detail in the Agreement. The public land on the Island will be managed in two

zones, confining most of the public use, such as camping, to Zone B, while reserving Zone A for intensive wildlife management with some limited public use. No activity which affects the Federal lands or the Federal conservation easement held on State lands is permitted unless it is compatible with the purposes for which these refuge lands were added to the refuge system. These determinations are made by the Service during its review of the State's annual operations plan. Moreover, Texas is required by the Agreement to refer to the FWS Regional Director all applications relative to permits, easements, rights-of-way and all other proposed non-wildlife or non-park uses except those relating to oil and gas exploration and development, which are valid existing rights held by parties or part of the sub-surface estate retained by the State of Texas. The Agreement also provides a detailed mechanism for the Service to take action should it be determined that the Texas Parks and Wildlife Department has conducted or permitted an incompatible activity on the Federal lands or affecting the Federal easement on State lands.

The Federal property on Matagorda, once an Air Force bombing range, has been the subject of more than seven years of controversy. We believe that this plan of action is a creative and reasonable solution to a long-standing problem. It satisfies Federal and State concerns for comprehensive management of Matagorda Island while providing for the continued protection of the 19,000 acres of Federal land and adding 24,000 acres of State land to the National Wildlife Refuge System. This more than doubles the acreage on Matagorda Island that is included in the refuge system and guarantees the conservation of the State wetlands which are critical habitat for the endangered whooping crane and essential wintering habitat for other migratory birds.

We are proud of our progress in resolving this issue in favor of the natural resources of the Island and we welcome Congressional endorsement of the exchange and the Agreement. We would object, however, to any interpretation of the legislation implying that such ratification is necessary in this situation or is precedent-setting under similar circumstances. We believe that Congress carefully crafted the authority for exchanges in the National Wildlife Refuge System Administration Act to provide administrative flexibility to strengthen the refuge system. Our actions have done just that and we believe it is important that this legal authority to solve other complicated resource problems not be curtailed.

United States Fish and Wildlife Foundation

Finally, let me turn briefly to S. 1271, the United States Fish and Wildlife Foundation Establishment Act. S. 1271 would establish the Foundation as a federally-chartered, non-profit organization to accept donations and make acquisitions in support of the Fish and Wildlife Service and of fish and wildlife conservation in the United States.

The importance of private initiative in solving pressing natural resource problems has never been greater than today. Federal and State governments cannot provide for the conservation of fish and wildlife resources alone. This is a situation that has been made very clear recently in our examination of Federal and State wetlands protection programs. This Administration is very interested in finding and encouraging creative non-Federal methods to help solve these problems. For example, the Secretary established the Protect our Wetlands and Duck Resources Task Force last year to, among other things, encourage private sector conservation of wetlands.

We believe private initiative can be tremendously successful. In 1980, the year of our most recent national survey, 99.8 million adults in this country, or 59 percent of all Americans, enjoyed fish or wildlife-oriented recreation. This great number of interested citizens should be encouraged to participate in fish and wildlife conservation.

However, in pursuing this goal, we must be assured that the mechanisms for encouraging private initiative will be effective ones. For this reason, we are in the process of taking a very close look at S. 1271. The bill contains a number of complex provisions and we therefore request that the Committee delay action on it until we have had time to complete our evaluation. We will forward our comments to you, Mr. Chairman, as soon as possible.

This concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions you or other Subcommittee members might have.

STATE OF TEXAS
GENERAL LAND OFFICE

GRANT OF EASEMENT TO UNITED STATES OF AMERICA

MATAGORDA ISLAND
CALHOUN COUNTY, TEXAS

THIS INDENTURE, made this 8th day of December, 1982, by and between the State of Texas, acting by and through the Governor of the State of Texas, the Commissioner of the Texas General Land Office (GLO), on behalf of the Public Free School Fund, pursuant to V.T.C.A. Article 5421c-13, and the Chairman of the Texas Parks and Wildlife Commission, acting pursuant to his authority to direct the policy of the Texas Parks and Wildlife Department (TPWD), hereinafter styled "Texas," and the United States of America, acting by and through the Secretary of the Interior and the Director of the U.S. Fish and Wildlife Service (FWS), or their authorized representatives, hereinafter styled "United States."

WITNESSETH:

WHEREAS, some 24,893± acres of land and water managed by Texas on behalf of the Public Free School Fund in the vicinity of Matagorda Island in Calhoun County, Texas (as described in part 1 of "Exhibit A" attached hereto and made a part of this INDENTURE), is suitable for wildlife conservation and National Wildlife Refuge System (NWRS) purposes;

WHEREAS, the Secretary of the Interior, acting through the Director of FWS, in the administration of the NWRS, is authorized, pursuant to section 4(b)(3) of Public Law 89-669, as amended (16 U.S.C. 668dd(b)(3)), to acquire lands or interests therein suitable for wildlife conservation and inclusion in the NWRS by exchange for lands or interests therein which are suit-

able for disposition, when the values of the lands or interests therein exchanged are approximately equal;

WHEREAS, Texas is authorized pursuant, to V.T.C.A. Article 5421c-13, to trade fee and lesser interests in Public School Land for fee and lesser interests in lands of unique biological, geological, cultural, or recreational value;

WHEREAS, Texas and the United States desire to exchange easements on the 19,000± acres of Federal land, including the 6.9-acre Port O'Connor dock annex, and 24,893± acres of State land on Matagorda Island in order to promote and enhance the conservation of wildlife, and continue to provide recreational opportunities for the public which are compatible, and do not interfere, with the primary purposes for which the lands are included in the NWRS;

WHEREAS, GLO desires to lease the Federal easement and the State lands to TPWD to provide integrated management of Matagorda Island; and

WHEREAS, Matagorda Island is of particular value in carrying out the Nation's migratory bird management program, and for other wildlife conservation purposes, and that such programs and purposes would be aided by the integrated management of Matagorda Island.

1. NOW THEREFORE, for and in consideration of the concurrent conveyance by the United States of an EASEMENT for 100 years to enter and manage the land and water described in part 2 of "Exhibit A," Texas hereby grants and conveys to the United States, its successors, and assigns, subject to the terms and conditions of the memorandum of agreement between the United States and Texas executed on the 8th day of December, 1982 (attached hereto and made a part of this INDENTURE, hereinafter styled "AGREEMENT"), and the conditions and provisions hereinafter set forth, an EASEMENT for 100 years for the conservation of the land and water described

in part 1 of "Exhibit A," for inclusion in the NWRS, including the right of access thereto by authorized representatives of FWS over and across any and all adjoining lands of Texas.

2. Subject, however, to: Texas' express reservation and retention of all interests in the land and water described in part 1 of "Exhibit A," not expressly granted herein, including, but not limited to, all existing rights-of-way, all outstanding mineral rights, other valid existing rights of Texas and the United States, and third parties under patents of record, and rights of third parties under oil and gas leases or other valid existing rights of record.

3. The conveyance hereunder shall be effective on the date of execution of: a) this GRANT OF EASEMENT by the Governor, the Commissioner of the General Land Office, and the Chairman of the Texas Parks and Wildlife Commission, or their authorized representatives; and b) the concurrent GRANT OF EASEMENT from the United States to Texas.

4. Texas, for itself and for its successors, assigns, lessees, and any other person claiming under them, covenants and agrees that it will cooperate in the management of the land and water described in parts 1 and 2 of "Exhibit A" as wildlife habitat pursuant to the terms of this EASEMENT, including the AGREEMENT.

5. It is understood and agreed by both parties that this EASEMENT grants no rights and imposes no limitations or restrictions upon Texas or the United States other than those set out herein, including "Exhibit B" attached hereto and made a part of this INDENTURE.

6. In the event that the AGREEMENT shall be terminated pursuant to paragraph 18 thereof, then all rights, titles, estates, and interests of the United States, its successors, and assigns, conveyed by this INDENTURE shall automatically and without entry, demand, or action, terminate and be of no further effect.

7. Should the United States' rights, titles, estates, and interests terminate pursuant to the foregoing provision, then Texas' rights, titles, estates, and interests in the EASEMENT conveyed to it by the United States shall automatically and without entry demand, or action, terminate and be of no further effect.

THE STATE OF TEXAS

By: _____
William P. Clements, Jr.
Governor, State of Texas

By: _____
Bob Armstrong
Commissioner, General Land Office,
and Chairman, School Land Board

By: _____
Perry R. Bass
Chairman, Texas Parks and Wildlife
Commission

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

This instrument was acknowledged before me on the 8th day of December, 1982, by WILLIAM P. CLEMENTS, JR., as Governor of the State of Texas.

Notary Public in and for
The State of Texas

Name: Spencer L. Reid
My Commission Expires: 2/10/86

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

This instrument was acknowledged before me on the 8th day of December, 1982, by BOB ARMSTRONG, as Commissioner of the General Land Office, and as Chairman of the School Land Board.

Notary Public in and for
The State of Texas

Name: Spencer L. Reid
My Commission Expires: 2/10/86

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

This instrument was acknowledged before me on the 8th day of December, 1982, by PERRY R. BASS, as Chairman of the Texas Parks and Wildlife Commission.

Notary Public in and for
The State of Texas

Name: Spencer L. Reid
My Commission Expires: 2/10/86

GRANT OF EASEMENT BY TEXAS TO UNITED STATES

EXHIBIT B

TERMS AND CONDITIONS OF EASEMENT
TO
THE UNITED STATES OF AMERICA

Attached to and made a part of that certain GRANT OF EASEMENT from Texas to the United States, dated the 8th day of December, 1982.

NOW THEREFORE TEXAS HEREBY AGREES THAT IT SHALL COMPLY with the terms and conditions of the AGREEMENT, and IT SHALL NOT, EXCEPT AS AUTHORIZED BY THAT AGREEMENT:

1. Manipulate the land and water or allow the manipulation of the land and water by others in any way that would diminish its value as wildlife habitat without the express written concurrence of the Secretary of the Interior through the Director of FWS, or his designee;

2. Grant additional easements, rights-of-way, or other interests other than for the development of or exploration for oil, gas, or other minerals pursuant to paragraphs 7 and 8 of the AGREEMENT, in the aforesaid land and water without the express written concurrence of the Secretary of the Interior or his designee;

3. Erect or permit the erection of any buildings, structures, or other appurtenances, other than for the development of or exploration for oil, gas, or other minerals pursuant to Paragraphs 7 and 8 of the AGREEMENT, including a causeway to any portion of the land and water covered by this EASEMENT, for any purpose;

4. Drain or permit the drainage by any means of any wetlands presently occurring or recurring due to natural causes; or

5. Conduct or authorize the conduct of any recreational activities which interfere with and are not compatible with the primary purposes for which the lands are included in the NWRS.

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

GRANT OF EASEMENT TO STATE OF TEXAS

MATAGORDA ISLAND
CALHOUN COUNTY, TEXAS

THIS INDENTURE, made this 6th day of December, 1982, by and between the United States of America, acting by and through the Secretary of the Interior and the Director of the U.S. Fish and Wildlife Service (FWS), or their authorized representatives, hereinafter styled "United States," and the State of Texas, acting by and through the Governor of the State of Texas, the Commissioner of the Texas General Land Office (GLO), on behalf of the Public Free School Fund, pursuant to V.T.C.A. Article 5421c-13, and the Chairman of the Texas Parks and Wildlife Commission, acting pursuant to his authority to direct the policy of the Texas Parks and Wildlife Department (TPWD), hereinafter styled "Texas."

WITNESSETH:

WHEREAS, the United States and Texas desire to exchange easements on the 19,000± acres of Federal land, including the 6.9-acre Port O'Connor dock annex, and 24,893± acres of State land on Matagorda Island in order to promote and enhance the conservation of wildlife, and continue to provide recreational opportunities for the public which are compatible, and do not interfere, with the primary purposes for which the lands are included in the National Wildlife Refuge System (NWRS);

WHEREAS, the Secretary of the Interior, acting through the Director of FWS, in the administration of the NWRS, is authorized, pursuant to section 4(b)(3) of Public Law 89-669, as amended (16 U.S.C. 668dd(b)(3)), to

acquire lands or interests therein suitable for wildlife conservation and inclusion in the NWRS by exchange for lands or interests therein which are suitable for disposition, when the values of the lands or interests therein exchanged are approximately equal;

WHEREAS, Texas is authorized, pursuant to V.T.C.A. Article 5421c-13, to trade fee and lesser interests in Public School Land for fee and lesser interests in lands of unique biological, geological, cultural, or recreational value;

WHEREAS, GLO desires to lease the Federal easement and the State lands to TPWD to provide integrated management of Matagorda Island;

WHEREAS, Matagorda Island is of particular value in carrying out the Nation's migratory bird management program, and for other wildlife conservation purposes, and that such programs and purposes would be aided by the integrated management of Matagorda Island;

WHEREAS, the interest in Federal lands described below has been found to be suitable for disposition; and

WHEREAS, the interest in Federal lands described below has been found to be approximately equal in value to the interest in State lands conveyed to the United States by concurrent GRANT OF EASEMENT.

1. NOW THEREFORE, for and in consideration of the concurrent conveyance by Texas of an EASEMENT for 100 years to the United States in the land and water surrounding Matagorda Island described in part 1 of "Exhibit A" (attached hereto and made a part of this INDENTURE), the United States hereby grants and conveys unto Texas, its successors, and assigns, subject to the terms and conditions of the memorandum of agreement between the United States and Texas executed on the 5th day of October, 1982 (attached hereto and made a part of this INDENTURE, hereinafter styled "AGREEMENT"), and the conditions and provisions hereinafter set forth, an

EASEMENT for 100 years to enter and manage the land and water described in part 2 of "Exhibit A," pursuant to, and for the purpose of implementing, the AGREEMENT, including the right of access thereto by authorized representatives of Texas over all land and water described in part 2 of "Exhibit A."

2. Subject, however, to: the United States' express reservation and retention of all interests in the land and water described in part 2 of "Exhibit A," not expressly granted herein, including, but not limited to, all existing rights-of-way, all outstanding mineral rights, other valid existing rights of Texas and the United States, and third parties under patents of record, and rights of third parties under oil and gas leases or other valid existing rights of record.

3. The conveyance hereunder shall be effective on the date of execution of: a) this GRANT OF EASEMENT by the Secretary of the Interior and the Director of FWS, or their authorized representatives; and b) the concurrent GRANT OF EASEMENT from Texas to the United States.

4. Texas, for itself and for its successors, assigns, lessees, and any other person claiming under them, covenants and agrees that it will cooperate in the management of the land and water described in parts 1 and 2 of "Exhibit A" as wildlife habitat pursuant to the terms of this EASEMENT, including the AGREEMENT.

5. It is understood and agreed by both parties that this EASEMENT grants no rights and imposes no limitations or restrictions upon Texas or the United States other than those set out herein.

6. In the event that the AGREEMENT shall be terminated pursuant to paragraph 18 thereof, then all rights, titles, estates, and interests of Texas, its successors, and assigns, conveyed by this INDENTURE shall automatically and without entry, demand, or action, terminate and be of no further effect.

7. Should Texas' rights, titles, estates, and interests terminate pursuant to the foregoing provision, then the United States' rights, titles, estates, and interests in the EASEMENT conveyed to it by Texas shall automatically and without entry, demand, or action, terminate and be of no further effect.

THE UNITED STATES OF AMERICA

By: _____
James G. Watt
Secretary of the Interior

By: _____
Robert A. Jantzen
Director, Fish and Wildlife Service

ACKNOWLEDGMENT

District of Columbia:

This instrument was acknowledged before me on _____, 1982, by James G. Watt, as Secretary of the Interior, and Robert A. Jantzen, as Director of the U.S. Fish and Wildlife Service.

Jean C. Eckert
_____
Notary Public

My commission expires: _____

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

This instrument was acknowledged before me on the 8th day of December, 1982, by WILLIAM P. CLEMENTS, JR., as Governor of the State of Texas.

Notary Public in and for
The State of Texas

Name: Spencer L. Reid
My Commission Expires: 2/10/86

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

This instrument was acknowledged before me on the 8th day of December, 1982, by BOB ARMSTRONG, as Commissioner of the General Land Office, and as Chairman of the School Land Board.

Notary Public in and for
The State of Texas

Name: SPENCER L. REID
My Commission Expires: 2/10/86

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

This instrument was acknowledged before me on the 8th day of December, 1982, by PERRY R. BASS, as Chairman of the Texas Parks and Wildlife Commission.

Notary Public in and for
The State of Texas

Name: Spencer L. Reid
My Commission Expires: 2/10/86

MEMORANDUM OF AGREEMENT BETWEEN UNITED STATES DEPARTMENT OF THE INTERIOR AND STATE OF TEXAS FOR THE MANAGEMENT OF THE MATAGORDA ISLAND STATE PARK AND WILDLIFE MANAGEMENT AREA A UNIT OF THE NATIONAL WILDLIFE REFUGE SYSTEM IN CALHOUN COUNTY, TEXAS

This Memorandum of Agreement (Agreement) is between the United States Department of the Interior (Interior), acting through the U.S. Fish and Wildlife Service (FWS), and the State of Texas (Texas), acting through the Governor, and the Texas Parks and Wildlife Department (TPWD) and the Texas General Land Office (GLO).

WHEREAS, it is the policy of Interior to recognize the vital role of the States in proper management and conservation of our national resources; and

WHEREAS, Interior and Texas recognize that Matagorda Island is:

A valuable and delicate State and national resource deserving of careful management and conservation; and

One of the few remaining barrier islands in the Nation which remain essentially in a natural state, and shall be preserved in an undeveloped state, except for any improvements necessary to administer the land as a refuge and wildlife management area and for park purposes; and

Of particular importance for wildlife, especially for the protection of endangered species such as the whooping crane; and

One of the most important waterfowl areas along the Texas gulf coast, and the North American Continent, especially during annual migration and wintering periods; and

A nationally, if not internationally, significant ecosystem that must be preserved; and

A significant recreational and historical area, both to the citizens of Texas and to the Nation; and

WHEREAS, Interior, by and through FWS, is the Federal agency responsible for carrying out this Nation's migratory bird and endangered species program responsibilities, including providing proper protection and sound integrated management with the State for said wildlife species utilizing Matagorda Island; and

WHEREAS, Interior, by and through the FWS, has since 1971 managed the 19,000± acres of Federal land on Matagorda Island as part of the Aransas National Wildlife Refuge; and

WHEREAS, Texas has demonstrated its ability to manage its fish and wildlife resources and maintain the delicate ecosystem of its gulf coast including State wetlands and Gulf lands on Matagorda Island; and

WHEREAS, GLO, the Texas agency which manages the Texas Coastal Public Lands, including the 24,893± acres of State wetlands and Gulf lands on Matagorda Island, has agreed to lease its land to TPWD to enable TPWD to manage the lands as provided for in this Agreement; and

WHEREAS, TPWD is the Texas agency responsible for the management of wildlife in the State reservation, as well as for the administration of Texas laws relating to wildlife, fish, oysters and marine life; and

WHEREAS, Interior wishes to obtain a conservation easement on the 24,893± acres of State wetlands and Gulf lands on Matagorda Island to be managed as a unit of the National Wildlife Refuge System (NWRS) in exchange for a grant of easement to Texas on the 19,000± acres of Federal land; and

WHEREAS, Texas, by and through TPWD, desires to provide integrated management of all Federal and State lands on Matagorda Island, shown on the

map, Exhibit "A" (attached hereto and incorporated by reference in this Agreement) as a park and wildlife management area, under an Agreement with Interior and lease from GLO; and

WHEREAS, Interior and Texas believe that the wildlife resources on Matagorda Island will benefit from integrated management of the Federal and State lands on Matagorda Island; and

WHEREAS, Interior and Texas agree there is need to define the respective rights and obligations of each in the integrated operation and management of Matagorda Island; and

WHEREAS, this Agreement is authorized under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee), section 6(b) of the Endangered Species Act (16 U.S.C. 1535 (b)), the Fish and Wildlife Coordination Act (16 U.S.C. 661-667c), the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j); and as authorized in the Texas Parks and Wildlife Code, and Texas Natural Resources Code Chapter 33, et seq.

NOW THEREFORE INTERIOR AND TEXAS HEREBY AGREE THAT:

1. Texas shall, through TPWD, provide integrated management of all publicly-owned land on Matagorda Island, pursuant to this Agreement, the "Matagorda Island Conceptual Plan" (State conceptual plan, attached hereto as Exhibit "B" and incorporated by reference in this Agreement), as approved by Interior, and in accordance with annual operations plans approved by FWS and GLO, as a wildlife refuge, park and wildlife management area in the manner, and subject to the further terms and conditions, as hereinafter prescribed in this Agreement.

2. For the purposes of carrying out their respective obligations and responsibilities under this Agreement, Texas will be represented by the Executive Director, TPWD, and the Texas Land Commissioner, GLO; and Interior will be represented by the Regional Director, FWS, Albuquerque, New Mexico.

3. TPWD shall adopt the management principles, goals and objectives set forth in the NWRS Manual in managing all publicly-owned land on Matagorda Island. Where this Agreement is inconsistent with the NWRS Manual, this Agreement shall govern.

4. The 19,000± acres of Federal land on Matagorda Island managed by TPWD will remain under the primary jurisdiction of FWS as a unit of the NWRS. Primary jurisdiction of the 21,568± acres of State wetlands and 3,325± acres of State Gulf lands will remain with Texas. The Federal conservation easement on the State lands shall be included in the NWRS.

5. TPWD, under the terms and conditions of this Agreement, will provide integrated management of Federal and State lands on Matagorda Island in accordance with the State conceptual plan and annual operations plans (as approved by FWS) by zone (Exhibit "A") as follows:

   Zone A - To be administered as a wildlife management area, excluding camping but including hunting, fishing, and other compatible wildlife-oriented research and recreational uses, subject to restrictions in applicable Federal and State laws, rules, and regulations.

   Zone B - To be administered as a wildlife conservation and park area, providing compatible public use opportunities, subject to restrictions in applicable Federal and State laws, rules, and regulations.

6. Except as otherwise provided in the easement from the State to the United States, Texas shall not use or permit the use, and shall take such measures as may be necessary to prevent the use or occupancy, of the publicly-owned portion of the island, for any purpose which is inconsistent or incompatible with the purposes herein specified and in its State conceptual plan or annual operations plans for the island. In addition, TPWD shall not authorize any use affecting the Federal lands or Federal conservation easement unless it is determined by FWS, during

the annual review of the annual operations plan, to be compatible with the purposes for which the refuge lands were added to the NWRS --to provide habitat for migratory birds, endangered species and other wildlife. TPWD, in managing the State lands specified in the Agreement, shall comply with this compatibility test, except for oil, gas, and mineral exploration and development which are valid existing rights held by third parties or part of the subsurface estate retained by GLO and exempt from refuge compatibility requirements. FWS Refuge System regulations regarding the administering of reserved and excepted mineral rights shall be applicable to the exercise of valid existing mineral rights.

7. Subject to valid existing rights, oil, gas, and other authorized mineral exploration and development will be permitted on the publicly-owned portion of Matagorda Island under applicable Federal and State laws, rules, and regulations necessary to assure protection of wildlife and other natural resources. The State environmental codes in the FWS approved Aransas National Wildlife Refuge Oil and Gas Plan (Exhibit C, attached hereto and incorporated by reference in this Agreement) shall be used as guidelines. Deviation from these guidelines must be recommended by TPWD and GLO and approved by the FWS Regional Director. Response from FWS shall be in writing within 30 days after receipt of such recommendations.

8. Texas shall refer to the FWS Regional Director all applications relative to permits, easements, rights-of-way for pipelines and all other proposed non-wildlife or non-park uses on or affecting the publicly-owned lands, except as provided in Paragraph 7 herein relating to oil and gas exploration and development. With such referral, Texas shall indicate its recommendations as to the application, with a statement that such proposed uses will or will not interfere with the use of the lands for the purposes for which they are made available to the State. FWS retains the authority to grant or deny applications on Federal lands. Applications affecting the Federal easement shall not be granted by Texas unless approved by the FWS Regional Director. Upon receipt of such referral, FWS shall respond in writing within 30 days except for actions requiring prepara-

tion of an environmental impact statement. Texas is, however, authorized to issue special use permits, for such daily operational matters as grazing, seismic, etc., which are consistent with annual operations plans approved by FWS.

9. No causeway, highway, bridge, ferry, public airport, or similar mode of transportation providing land vehicle or aircraft access to the island will be permitted, except that TPWD, GLO, and FWS and their respective agents and assigns, may utilize all modes of transportation necessary for the proper administration of the island. No land vehicle or aircraft will be allowed on the publicly-owned portion of the island except as authorized for administration, management, enforcement, and maintenance of the land as Matagorda Island State Park and Wildlife Management Area, and as a unit of the NWRS.

10. TPWD will obtain use of all buildings, structures, and facilities located on the Federal land including the Port O'Connor dock annex (6.9 acres) and maintain those not disposed of as provided herein. FWS reserves the right to store refuge equipment, at a mutually-agreed site, and use all docks, roads, aircraft runways, and all other access facilities for administrative use in carrying out its Federal responsibilities. All buildings, utilities, and facilities not selected for use by TPWD or FWS will be removed from the site or disposed of as mutually agreeable in accordance with the General Services Administration's rules and regulations covering disposal of excess Federal property. TPWD and FWS, subject to each other's consent, will be permitted to construct, modify, or move any building, structure, or utility system to enable it to meet its intended use as authorized by this Agreement.

11. Grazing may be permitted by TPWD on Federal lands in accordance with the State conceptual plan, annual operations plans and the NWRS Manual. Grazing on State lands will be compatible with the purpose for which the Federal easement was added to the NWRS. TPWD will prescribe in its annual operations plan the conditions under which grazing may be permitted, including livestock type and number, distribution and duration of grazing, and conditions by which livestock numbers will be manipulated

in response to changes in range conditions resulting from climatological or other phenomena. FWS and GLO will be responsible for the administration of grazing leases. TPWD will monitor the grazing program and identify adjustments in its annual operations plan required to protect the range and wildlife resources.

12. Nothing in this Agreement shall impair the ability of TPWD to permit hunting and fishing on State lands in accordance with good wildlife management practices and consistent with the Texas Parks and Wildlife Code. All hunting and fishing shall be managed to assure that these activities are not likely to jeopardize the continued existence of any federally listed endangered or threatened species.

13. All monies received from products of the land or other privileges granted on the 19,000± acres of Federal lands (subject to valid existing rights) in this Agreement, shall accrue to FWS for deposit into the National Wildlife Refuge Revenue Sharing Fund. All monies received from products of the land on the State lands (subject to valid existing rights) in this Agreement, shall accrue to GLO for deposit into the appropriate School Fund.

14. No admission fees of any kind shall be charged for entrance into the publicly-owned portion of the island. Fees may be charged to defray actual expenses for special programs and services including transportation to and from recreational areas, and rental of blinds and equipment; all fees so obtained may be retained by Texas.

15. For the 19,000± acres of Federal land on Matagorda Island, FWS will make payments to Calhoun County, Texas, in accordance with the Refuge Revenue Sharing Act (16 U.S.C. 715-s).

16. With respect to all of the publicly-owned lands on Matagorda Island, TPWD and FWS shall enter into a Law Enforcement Memorandum of Understanding as provided by section 3(b) of the Fish and Wildlife Improvement Act of 1978, Public Law 95-616 (16 U.S.C. 742 l(b)). TPWD shall assign full-time law enforcement personnel to administer the land subject

22-378 O—83——5

to this Agreement, and FWS shall, subject to applicable laws and regulations, authorize TPWD law enforcement personnel to enforce Federal fish and wildlife laws.

17. TPWD shall submit to the Regional Director of FWS and the Commissioner of GLO for approval a 5-year master plan by October 1 of the beginning of each 5-year period and an annual operations plan no later than October 1 of each calendar year for the following year to describe its management activities on Matagorda Island. Each 5-year plan shall include a statement of management goals and priorities. Each annual plan shall include staffing levels to achieve these goals. No irreversible commitment of resources by TPWD shall occur before the initial 5-year plan is approved. These documents shall follow the format as required by the Federal Aid in Fish and Wildlife Restoration Program. Annual reports of activities for the preceding year will be submitted in compliance with the above cited Program. FWS and GLO shall make inspections of the area at such times as they elect to ensure that the State's operations are in keeping with master and annual plans.

18. If FWS believes or has reason to believe that TPWD has conducted or permitted an incompatible activity on the Federal lands or affecting the Federal easement, FWS will notify TPWD. TPWD shall immediately cease the activity pending appeal to the Secretary. If TPWD does not cease, FWS, pending the appeal, shall assume management to the extent necessary to prevent the incompatible activity.

If FWS believes or has reason to believe that TPWD has violated any of the conditions set forth in the Agreement that do not constitute an incompatible activity, FWS shall notify TPWD. Such notice shall be in writing and shall set forth the alleged violation of the conditions of the said paragraph. A copy of the notice shall simultaneously be delivered to GLO. Upon receipt of said notice, TPWD shall immediately acknowledge receipt of said notice and respond in writing to the allegations of said notice within thirty (30) days. If TPWD agrees that corrective action is necessary, FWS, GLO, and TPWD shall mutually agree on the

number of days and conditions necessary for the correction of said violation or violations. If TPWD does not agree that a violation has occurred and a settlement cannot be reached, TPWD may appeal to the Secretary who will make a final decision after notice and opportunity for a hearing pursuant to the Administrative Procedure Act.

If, after appeal, any violation is found and if said violation is not corrected within sixty (60) days after the final decision on appeal is rendered, or if other appropriate legal proceedings are not initiated within such time period, TPWD shall forfeit any interests and this Agreement shall terminate.

19. Upon receipt of a valid petition from any public or private organization or individual alleging that Texas is using or permitting use of the Federal lands or affecting the Federal easement covered by this Agreement in a manner that violates the terms of this Agreement, FWS shall, within 30 days, investigate the allegation and make a determination whether, pursuant to paragraph 18 of this Agreement, it shall notify Texas of the alleged violation. If FWS determines the petition to be invalid or does not otherwise pursue the petition, petitioner may appeal to the Secretary of the Interior who shall make a final decision after providing opportunity to the petitioner and TPWD to submit comments.

20. In the event this Agreement is terminated, Texas shall have ninety (90) days from the effective date of termination to remove any structure placed on the area by the State and to restore the land affected by such removal as nearly as possible to its original condition considering normal wear and tear. If this Agreement is terminated, Interior will immediately assume direct management of the Federal lands on the island, including any permits or similar agreements which extend beyond said termination date. It is the intention of the parties that this Agreement shall transfer no permanent rights to title, ownership, or control of any Federal or State land, water, facilities, or equipment included in this document.

21. This Agreement and all documents referred to herein, may be amended in the future by mutual consent or agreement of the Executive Director of TPWD, Regional Director of FWS, and GLO Commissioner. In effecting any such amendment, FWS shall comply with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.). FWS shall provide 30 days public notice prior to the effective date of any amendment to this Agreement.

22. This Agreement is entered into for a period of one hundred (100) years, commencing on the date it is fully executed.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day, month, and year opposite their signatures thereto:

THE UNITED STATES OF AMERICA
Department of the Interior

_____, 198__ by: _____
James G. Watt
Secretary of the Interior

12-8, 1982 by: _____
Robert A. Jantzen
Director, U.S. Fish and Wildlife Service

and

THE STATE OF TEXAS

12-8-, 1982 by: _____
William P. Clements, Jr.
Governor, State of Texas

_____, 198__ by: _____
Bob Armstrong
Commissioner, General Land Office, and Chairman, School Land Board

12-8, 1982 by: _____
Perry R. Bass
Chairman, Texas Parks and Wildlife Commission

Attachments

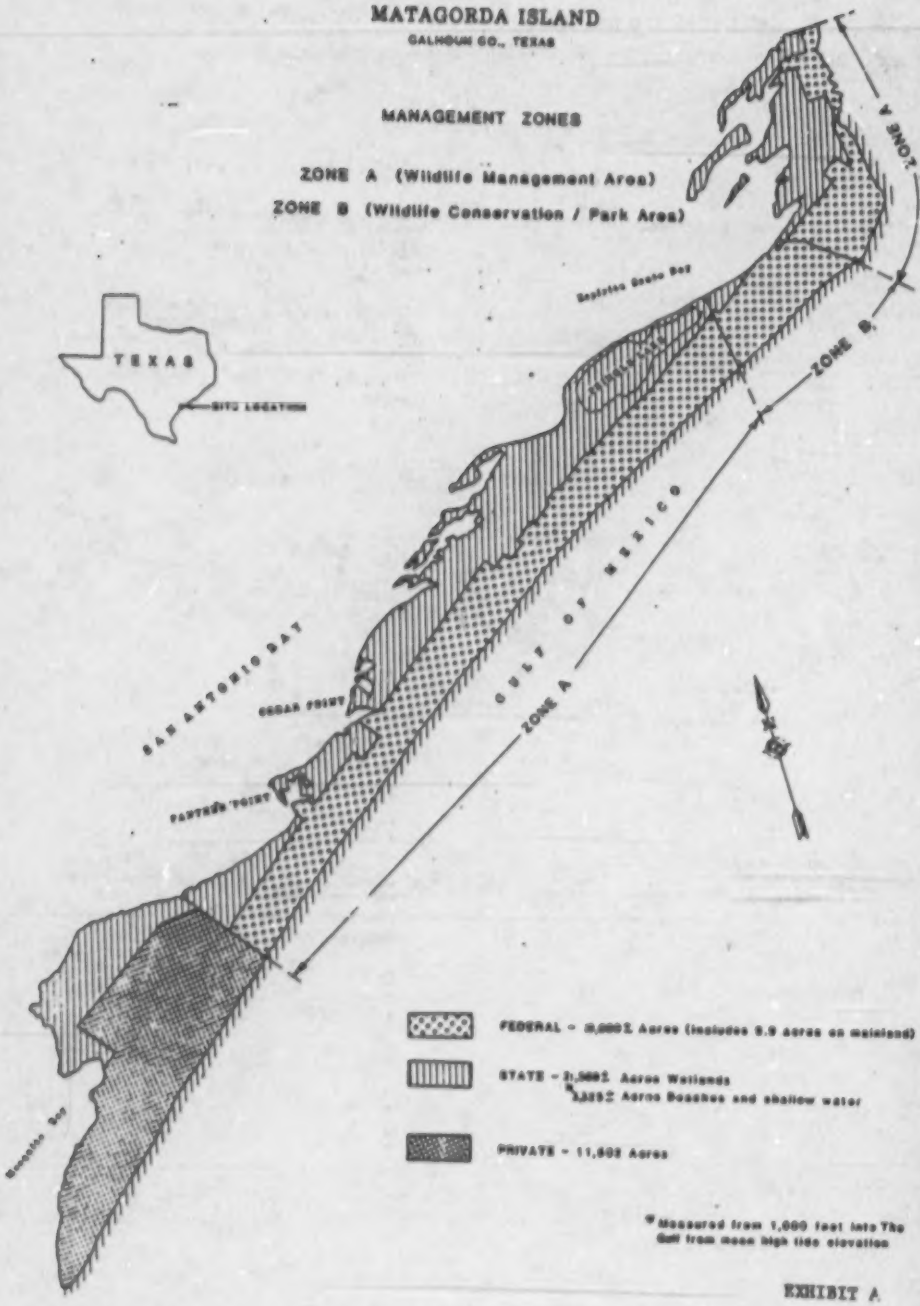
MATAGORDA ISLAND
CALHOUN CO., TEXAS
MANAGEMENT ZONES
ZONE A (Wildlife Management Area)
ZONE B (Wildlife Conservation / Park Area)
TEXAS
SITE LOCATION
ZONE A
ZONE B
GULF OF MEXICO
SAN ANTONIO BAY
CEDAR POINT
PANTHER POINT
Matagorda Bay
FEDERAL - 8,000± Acres (Includes 6.9 acres on mainland)
STATE - 2,500± Acres Wetlands
3,325± Acres Bayshes and shallow water
PRIVATE - 11,502 Acres
*Measured from 1,000 feet into The Gulf from mean high tide elevation

EXHIBIT A

Testimony of

Honorable Garry Mauro, Commissioner
General Land Office of Texas

before the

Environmental Pollution Subcommittee
of the
Senate Environment and Public Works Committee

May 19, 1983

regarding S. 696 and H. R. 1935, a bill to ratify the agreement on
Matagorda Island

As newly elected Texas Land Commissioner, I am naturally concerned about congressional hearings and legislation as they relate to lands under my management authority. Prior to my election in November 1982, I discussed the Matagorda Island management concept in depth with then Land Commissioner Bob Armstrong. I was pleased with the analysis, extensive state and federal coordination, and assurances that preceded the signing of documents on December 8, 1982. This signing, as you are aware, resolved the long-standing issue of management of one of our most unique natural resource areas in Texas.

The detailed nature of the cooperative agreement to which my office is one of three parties and the language included in our lease to the Texas Parks and Wildlife Department are indicative of the commitment the General Land Office has made to ensuring protection and proper management of Matagorda Island. Further, commitment by the state of Texas to endorse the recently signed

management agreements was evidenced by the support given by Texas officials and other environmental and conservation organizations at the August 1982 public hearing in Austin, Texas. For example, the following provided testimony at this hearing in support of the now approved management agreements:

Governor Bill Clement

Department of Interior

Lt. Governor Bill Hobby

Speaker Bill Clayton

Rep. Gib Lewis

Commissioner Bob Armstrong

Sen. Tati Santiesteban

Rep. John Sharp

Chairman Perry Bass - TPWD

Rep. Bennie Bock

Judge John Lindsay

Sharron Stewart - Tx. Env. Coalition

Dick Ingram - Gulf Coast Conservation Assn.

John Hamilton - Tx. Conservation Foundation

Audubon Society - National & local

Alan Allen - Sportsmen Clubs of Texas, Exec. Dir.

Ralph Rayburn - Tx. Shrimp Assn., Exec. Dir.

Harry Tennison - Game Conservation International, President

Bill LeBlanc - Sportsmen Clubs of Texas, President

I am of the firm belief that the agreements consummated concerning Matagorda Island will ensure the proper protection and management of this unique natural

resource for all Texans as well as interested citizens of the United States for many years to come.

The bill pending before this committee today seeks to ratify the exchange agreement between the Department of the Interior and the state of Texas concerning National Wildlife Refuge System lands located on Matagorda Island. After reviewing this proposed legislation, I can provide my support for this bill as it does not conflict with the now executed Matagorda Island management agreements, but merely provides for congressional ratification of complex unique exchange agreements. These agreements completely satisfy my concerns for the proper protection and unified management of the federal lands and sensitive state wetland areas.

At this point, I would like to take the opportunity to clarify several misconceptions concerning the protection and management afforded Matagorda Island by December 1982 agreements. First, a few organizations have stated that the federally-owned 19,000 acres are removed from the National Wildlife

Refuge System. To the contrary, the 19,000 acres of federal land never left the system plus, the 24,893 acres of state land are included in the system for management purposes. Paragraphs 4, 6, 7, 9 and 11 of the cooperative agreement and the easement exchange all reference the inclusion of these lands into the National Wildlife Refuge System.

Second, others have claimed that wildlife management on Matagorda Island will be subordinate to park and recreational development. This also is a misconception as paragaraph 5 of the cooperative agreement only allows a very small portion of the island on the upper end to be administered as a park area. This park area and all other areas on the island are subject to federal laws, state laws, the National Wildlife Refuge Act, the Endangered Species Act, the National Wildlife Refuge System Manual and others.

Third, statements have been made that management by the Texas Parks & Wildlife Department will result in damage to the whooping crane habitat. All proposed uses such as habitat modification, road and facility construction, waterfowl

hunting blinds, grazing, seismic exploration, and oil and gas development, are accommodated for in the cooperative agreement to ensure proper protection of the whooping crane and other threatened or endangered species. For example, paragraph 6 of the cooperative agreement requires the Texas parks and Wildlife Department in managing the state lands to comply with the compatibility test of the National Wildlife Refuge System. This test requires any activity "to be compatible with the purposes for which the refuge lands were added to the National Wildlife Refuge System--to provide habitat for migratory birds, endangered species and other wildlife." As in paragraph 8, Texas must refer to the FWS Regional Director all applications relative to permits, easements, rights-of-way for pipelines and all other proposed non-wildlife or non-park uses on or affecting the publicly-owned lands. . . ."FWS retains the authority to grant or deny applications on federal lands. Applications affecting the federal easement (state lands) shall not be granted by Texas unless approved by the FWS Regional Director." As stated in paragraph 7, "oil, gas and other authorized mineral exploration and development will be permitted on the

publicly-owned portion (state and federal lands) of Matagorda Island under applicable federal, state laws, rules, and regulations necessary to assure protection of wildlife and other natural resources." Also, all such activities must adhere to the Aransas National Wildlife Refuge Oil and Gas Plan unless approved by the FWS Regional Director. Paragraph 12 states, "All hunting and fishing shall be managed to assure that these activities are not likely to jeopardize the continued existence of any federally listed endangered or threatened species." The cooperative agreement requires FWS to assume management in the event that Texas Parks and Wildlife Department has conducted or permitted an incompatible activity.

And finally, any proposed activities by the Texas Parks and Wildlife Department not prohibited in the agreements must be submitted to the Department of the Interior and the Texas General Land Office for review and approval prior to such action. This dual oversight, citizen's petition provisions, and other extensive requirements included in the cooperative

agreement and my lease to Texas Parks and Wildlife Department, and management pursuant to the requirements, goals and objectives of the National Wildlife Refuge System provide for proper protection and management for Matagorda Island.

Therefore, in conclusion I want to again emphasize my support for your legislation and the executed management agreements as well as give you my assurance as Texas Land Commissioner that I will enforce these agreements and ensure proper management and protection of Matagorda Island and its attendant valuable natural resources.

Thank you for this opportunity to present testimony before you today.

May 9, 1983

The Honorable Lloyd Bentsen
United States Senate
Room 240 Russell Building
Washington, D. C. 20510

Dear Senator Bentsen:

I appreciate your assistance and leadership given on the Matagorda Island issue. As Texas Land Commissioner, I am vitally concerned that this unique area be properly protected and managed. I have recently seen a "Fact Sheet on Matagorda Island" being circulated by the Defenders of Wildlife, The Wilderness Society and others. This fact sheet has many misleading statements, factual errors and other inaccuracies.

Specifically, the recently signed management agreements for Matagorda Island were the culmination of efforts by state and federal agencies, several prominent environmental groups and conservation organizations. The management package for Matagorda Island provides maximum protection, controlled public access, protection of sensitive areas and endangered/threatened species, and management by highly qualified personnel. I believe that under the existing agreements, Matagorda Island will be properly protected and managed.

Therefore, for the record, I am submitting a staff analysis on a line-by-line basis pertaining to this fact sheet.

Thank you for your attention to this matter which is of extreme importance to the State of Texas.

Sincerely,

Garry Mauro

Garry Mauro

GM/MH/jb
Attachment

Garry Mauro
Commissioner
General Land Office

Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78701
(512) 475-2071

Response to the Defenders of Wildlife Fact Sheet on
Matagorda Island

Paragraph 1: "On December 8, 1982, Secretary Watt signed an agreement that transfers management of Matagorda Island to the State of Texas." Only partially true. The Department of the Interior (DOI) and the State of Texas exchanged easements. First, DOI granted an easement on the 19,000 acres of federal land to the State of Texas - this land did not leave the National Wildlife Refuge System; and Texas granted an easement on the 24,893 acres of state-owned land for inclusion into the National Wildlife Refuge System. For example, the easement from the State to DOI states, "Whereas, the Secretary of the Interior, acting through the Director of FWS, in the administration of the National Wildlife Refuge System, is authorized, pursuant to Section 4(b)(3) of P.L. 89-669, as amended (16 U.S.C. § 668dd(b)(3)) to acquire lands and interests therein for wildlife conservation and inclusion in the National Wildlife Refuge System." Second, paragraph 4 of the cooperative agreement states, "The 19,000 acres of federal land on Matagorda Island managed by Texas Parks and Wildlife Department will remain under the primary jurisdiction of FWS as a unit of the National Wildlife Refuge System."

Paragraph 1 (cont'd): "This agreement could be disastrous for the endangered whooping crane. . . ." To the contrary as many protective clauses are included in the cooperative agreement which governs management of the island. For example, paragraph 12 of this agreement states, "All hunting and fishing shall be managed to assure that these activities are not likely to jeopardize the continued existence of any federally listed endangered or threatened species." Also, paragraph 18 of the same agreement states, "If FWS believes or has reason that Texas Parks and Wildlife Department (TPWD) has conducted or

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permitted an incompatible activity on the federal lands or effecting the federal easement, FWS will notify TPWD. TPWD shall immediately cease the activity pending appeal to the Secretary. If TPWD does not cease, FWS, pending the appeal, shall assume management to the extent necessary to prevent the incompatible activity.

Further, since both state and federal lands are included in the National Wildlife Refuge System, any activities are subject to the National Wildlife Refuge Act, Endangered Species Act, and others.

2nd paragraph: "A lawsuit has been filed to prevent this illegal transfer," and according to the U.S. Solicitor General's Office, such a transfer is legal.

2nd paragraph (cont'd): "We urge you to oppose legislation that gives away management of Matagorda Island and to support continued federal protection for the endangered whooping crane." To the contrary. As under the cooperative agreement, paragraph 17 requires that the Texas Parks and Wildlife Department submit to FWS and the General Land Office a 5-year master plan and annual operation plan for approval prior to the commitment of resources by Texas Parks and Wildlife Department. Further, these documents shall follow the format as required by the Federal Aid in Fish and Wildlife Restoration Program. This provision among others provides for oversight management by FWS and the Texas General Land Office.

Paragraph 5: "The Texas Parks and Wildlife Department is required by state law to administer the publicly-owned land on Matagorda primarily for public

recreational purposes. Wildlife conservation and preservation of endangered species are subordinate to the primary goal of recreational development." This statement is erroneous because of the following: First, Section 22.202 of the above referenced state law states, "All land within the Matagorda Island State Park and Wildlife Management Area on June 1, 1979 (Note: No lands present by this date) and all land included within the park and management area after that date are dedicated for park and wildlife management purposes." Second, paragraph 5 of the cooperative agreement only allows a very small portion of the island on the upper end to be administered as a park area, providing compatible public use opportunities, subject to restrictions in applicable federal and state laws, rules and regulations. This park area and all other areas on the island are subject to federal laws, state laws, National Wildlife Refuge Act, Endangered Species Act, National Wildlife Refuge System Manual, etc.

Paragraph 6: Reference is made to the damage to whooping crane habitat from "incompatible uses" on Matagorda Island such as habitat modification, road and facility construction, waterfowl hunting blinds, grazing, seismic exploration and oil and gas development. All of these proposed uses are accommodated for in the cooperative agreement to ensure proper protection of the whooping crane and other threatened or endangered species. For example, paragraph 6 of the cooperative agreement requires the Texas Parks and Wildlife Department in managing the state lands to comply with the compatibility test of the National Wildlife Refuge System. This test requires any activity "to be compatible with the purposes for which the refuge lands were added to the National Wildlife Refuge System—to provide habitat for migratory birds, endangered species and other wildlife." Second, as in paragraph 8, Texas must refer to

the FWS Regional Director all applications relative to permits, easements, rights-of-way for pipelines and all other proposed non-wildlife or non-park uses on or affecting the publicly-owned lands. . . ."FWS retains the authority to grant or deny applications on federal lands. Applications affecting the federal easement (state lands) shall not be granted by Texas unless approved by the FWS Regional Director." Third, as stated in paragraph 7, "oil, gas and other authorized mineral exploration and development will be permitted on the publicly-owned portion (state and federal lands) of Matagorda Island under applicable federal, state laws, rules, and regulations necessary to assure protection of wildlife and other natural resources." Also, all such activities must adhere to the Aransas National Wildlife Refuge Oil and Gas Plan unless approved by the FWS Regional Director. Fourth, paragraph 12 states, "All hunting and fishing shall be managed to assure that these activities are not likely to jeopardize the continued existence of any federally listed endangered or threatened species." Finally, the cooperative agreement requires FWS to assume management in the event that Texas Parks and Wildlife Department has conducted or permitted an incompatible activity.

Paragraph 7: "I strongly recommend that Aransas-like protection be extended to the entirety of Matagorda Island." This is exactly what was accomplished through the easement exchange, cooperative agreement and the General Land Office lease. The narrative above verifies this fact.

Paragraph 8: "We encourage you to support alternative legislation to formally place Matagorda Island in the National Wildlife Refuge System (NWRS) under federal management and control." As previously stated from the cooperative agreement, the 19,000 acres of federal lands never left the NWRS and the

24,893 acres of state lands are included in the NWRS for management purposes. (Paragraphs 4, 6, 7, 9, 11 of the cooperative agreement and the easement exchange all relate to inclusion of lands into the NWRS.) Further, both the FWS and the General Land Office have oversight for management and veto authority for any incompatible activities proposed or conducted by the Texas Parks and Wildlife Department.

S. 646

Defenders of Wildlife

FACTSHEET

MATAGORDA ISLAND

(1) On December 8, 1982, Secretary Watt signed an agreement that transfers management of Matagorda Island to the State of Texas. This agreement could be disastrous for the endangered whooping crane and may set a dangerous precedent for other attempts by Secretary Watt to give away other units of the National Wildlife Refuge System.

(2) A lawsuit has been filed to prevent this illegal transfer, but legislation has now been introduced (H.R. 1935, S. 696) to circumvent the court process by Congressionally ratifying the agreement. We urge you to oppose legislation that gives away management of Matagorda Island and to support continued federal protection for the endangered whooping crane.

WHY IS MATAGORDA SO IMPORTANT?

(3) Matagorda Island is one of two remaining undisturbed barrier islands that provides suitable habitat for the wintering whooping crane. The still vulnerable flock of only 78 birds has already exceeded the carrying capacity of nearby Aransas National Wildlife Refuge and now must expand to Matagorda.

(4) Scientific evidence firmly indicates that whooping cranes require large wintering areas free from human disturbance. Each crane family requires 400 acres of undisturbed habitat and the birds are extremely sensitive to both commercial and recreational human activity. Only Matagorda Island can provide the combination of suitable feeding ground and solitude that America's most famous endangered species needs to survive.

WHAT'S WRONG WITH STATE MANAGEMENT OF MATAGORDA?

(5) State management of Matagorda under the agreement signed by Secretary Watt will inevitably lead to increased development and human use of the Island that could seriously threaten the recovery of the whooper. The Texas Parks and Wildlife Department is required by state law to administer the publicly-owned land on Matagorda primarily for public recreational purposes. Wildlife conservation and preservation of endangered species are subordinate to the primary goal of recreational development.

(6) A special concern is the degree to which the state contemplates habitat modification, including road and facility construction, a doubling of the number of waterfowl hunting blinds, and manipulation

of habitat to enchance game production. The state is also authorized to issue special use permits for grazing, seismic exploration and oil and gas development. These incompatible uses of Matagorda Island will force the whoopers to search for other less suitable habitat where they are threatened by exposure to other human hazards.

(1) Scientific experts in whooping crane preservation have articulated the threat to whooping crane recovery and the compelling need for continued federal management of Matagorda. In the words of Dr. George Archibald, an internationally acclaimed crane expert:

> "If these areas (Matagorda) are opened to recreational development to the degree that the cranes are forced to find other feeding areas, we can expect an increase in crane mortality. I strongly recommend that Aransas-like protection be extended to the entirety of Matagorda Island."

(2) WHAT CAN YOU DO TO HELP PROTECT THE WHOOPING CRANE?

We urge you to strongly oppose legislation to ratify the transfer of management of Matagorda to the State of Texas. Please urge Chairman Breaux and Chairman Chafee to carefully consider the serious policy ramifications of the proposed transfer, and to carefully analyze the hearing record in both the House and Senate before moving on any legislation. We encourage you to support alternative legislation to formally place Matagorda in the National Wildlife Refuge System under federal management and control.

TEXAS
PARKS AND WILDLIFE DEPARTMENT

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STATEMENT OF PERRY R. BASS

CHAIRMAN, TEXAS PARKS AND WILDLIFE COMMISSION
STATE OF TEXAS

CONCERNING MATAGORDA ISLAND, TEXAS

before the

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

of the

SENATE COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

May 19, 1983

Mr. Chairman, Members of the Subcommittee:

My name is Perry R. Bass. I am the Chairman of the Texas Parks and Wildlife Commission.

I welcome this opportunity to appear before you and to join with the National Audubon Society and the Commissioner of the General Land Office of the State of Texas in support of S.696. The National Audubon Society has a distinguished record over many years for its successful efforts to save the magnificent whooping cranes and other protected wildlife that use Matagorda Island. S.696 ratifies an agreement between the federal government and the State of Texas that will clearly further that effort, because the Agreement provides that the state-owned wetlands on Matagorda Island will be placed by easement into the National Wildlife Refuge System and that both state and federal lands on Matagorda Island will be under unified management, utilizing the principles developed for the National Wildlife Refuge System. The easement also prohibits the construction of a causeway, commercial development, and recreational activities that are incompatible with the primary purposes of the refuge.

The Texas Parks and Wildlife Commission, representing the State of Texas, has had a long-standing interest in managing Matagorda Island since the federally-owned portion was declared excess by the Air Force in 1975. As you know, the Air Force seized this land in World War II and used it as a bombing range. The Air Force continued to use it for military purposes until 1975. Since 1975, the federally-owned portion of the Island has been administered by the Fish and Wildlife Service, although without much capital investment because of its uncertain status.

The State's interest in Matagorda Island stems from the unique factual situation on the Island. The State owns and manages the Island's wetlands, which, in terms of biological productivity, constitute the most valuable portion of the Matagorda Island system. In fact, the valuable habitat for whooping cranes on Matagorda Island is the state-owned

wetlands. While the federally-owned uplands serve as a buffer zone, the wetlands are the critical areas for feeding and other day-to-day activities of the whooping cranes. Because these wetlands are part of a trust fund for free public schools, the State cannot grant these wetlands to the federal government. However, all parties agree that unified management is desirable to bridge a difference in land ownership.

Because of this need to provide the unified management that will benefit the whooping cranes and other wildlife, the State has agreed to put its wetlands into the National Wildlife Refuge System, in exchange for the right to manage the federally-owned uplands. The State's management must be conducted pursuant to the requirements of the National Wildlife Refuge System, not only on the federally-owned uplands, but also on the State owned wetlands. In addition, the State's operation plans must be reviewed and approved by the Fish and Wildlife Service. Thus, the acreage on Matagorda Island included within the refuge system has more than doubled pursuant to the Agreement, and now includes the most valuable habitat for Whooping Cranes and other endangered and migratory birds that use the Island.

The Agreement prohibits intensive development for recreation. Not only is the State required to manage the Island according to the National Wildlife Refuge System rules, but it has also agreed that wildlife concerns will be preeminent, and any recreational uses that interfere with these wildlife practices will be discontinued. Thus, if the whooping cranes' range continues to expand, the State has agreed that its operations on Matagorda will place the whooping cranes' and other endangered species needs first. Moreover, since the State has carefully enumerated its limited plans for development, no conflict between the occasional visitors and wildlife should develop.

The non-wildlife uses that are permitted by the Agreement, such as grazing, seismic exploration, and oil and gas development, are all currently allowed under Fish and Wildlife Service administration; these activities will be conducted in a manner that is compatible with protection of the whooping cranes. Since a causeway and regularly-scheduled ferry are prohibited by the Agreement, access to the Island is limited. The number of visitors and types of activity on the Island will be comparable to that under current Fish and Wildlife Service management.

As you can tell from this brief description of the binding agreements that are an integral aspect of the easement exchange, the Texas Parks and Wildlife Department has committed itself to make wildlife concerns preeminent in its management of Matagorda Island. A violation of this obligation will lead to a termination of the agreement. Moreover, the U.S. Fish and Wildlife Service will review annual plans to ensure that refuge standards are being met. Finally, the Parks and Wildlife Department has worked through the Texas Legislature this session, and obtained an amendment to the legislative creation of Matagorda Island State Park and Wildlife Management area. This bill, which has been passed by both the House and the Senate and signed by the Governor, underscores the wildlife protection mandate for Matagorda and is thus fully consistent with the obligations of Parks and Wildlife pursuant to this Agreement.

The Texas Parks and Wildlife Department has the commitment and manpower to manage the 24,000 acres of state land and 19,000 acres of federally-owned land on Matagorda Island. The Texas Parks and Wildlife Department will operate the Island through its Executive Director, who will call on personnel (as needed) from its Fisheries, Law Enforcement, Parks, and Wildlife departments, as he administers all wildlife management and park areas. The Parks and Wildlife Department currently owns or administers 115 park units containing 189,000 acres and 18 wildlife management areas containing 265,000 acres, for a total of 454,000 acres. The State Legislature has already appropriated $431,927.00 in the current biennium for the operational costs associated with Matagorda Island. In addition, other sources of funds are available to the Parks and Wildlife Department: (1) a special game and fish fund that could be used for wildlife related activities, including law enforcement; (2) the State Parks Fund, a dedicated fund that could be used for park operations and capital improvements on the Island; and (3) general revenue funds which could be used for all purposes. Not only does the Parks and Wildlife Department have the expertise and funds available, but it also has the personnel to adequately manage the Island. The Parks and Wildlife Department will have at least one law enforcement officer assigned permanently to the Island 24 hours, 7 days a week. In addition, the Parks and Wildlife Department has fifteen law enforcement officers within the immediate region. In

addition, there is an office in Rockport, where a Regional Director for Wildlife, Parks & Fisheries is stationed.

As I am sure you can appreciate, the negotiations leading to this unique Agreement spanned many months. They involved the public, concerned environmental groups, the Department of the Interior, the General Services Administration and the State of Texas, represented by both the General Land Office and Texas Parks and Wildlife Department. The environmental impact statement process provided an opportunity for everyone to share their concerns. The Department of the Interior and the General Services Administration started the environmental impact statement process with a scoping hearing in March, 1982, released the draft environmental impact statement in July, held a hearing on that statement in August, and released the Final Environmental Impact Statement in November, 1982. Throughout this process, the Department of the Interior, the General Services Administration, the General Land Office, and the Parks and Wildlife Department sought not only to obtain and deal with public comments, but to meet and revise all of the important documents to reflect their concerns. During these meetings, the National Audubon Society proved invaluable in ensuring principled focus on long-term issues and in providing specific language that established unified management over both the State and Federally-owned lands -- language that clearly requires the regulations of the National Wildlife Refuge to guide the State's management.

I firmly believe that the proposed legislation is necessary to discourage future uncertainty over the management of Matagorda Island. As you are all aware, the official status of the Island has been in limbo since the Air Force declared the lands excess in 1975, and even now, there is a lawsuit pending challenging the Department of Interior's action in entering into this Agreement. We believe that the Agreement reached between the Department of the Interior and the State of Texas is good for the Island and its resources. The exchange of easements not only protects the wildlife, but is also authorized under the National Wildlife Refuge Administration Act and is consistent with the Secretary of the Interior's obligations under the Migratory Bird Conservation Act and the Migratory Bird Treaty Act. The Secretary carefully complied with all of the procedural requirements of NEPA and the Administrative Procedure Act. Unfortunately, there are those who disagree with the Secretary's decision, but that does not invalidate Interior's compliance with the

applicable statutes. We regret their bringing of the lawsuit and the uncertainty that it causes. Enactment of S.696 will be totally dispositive of that lawsuit, and will thus ensure the certainty of unified management of Matagorda Island, which is so important to wildlife protection.

In conclusion, we believe that the National Wildlife Refuge System has benefitted enormously by the State's willingness to manage the upland portion of the Island in combination with the State-owned wetlands. Moreover, we believe that the State has the expertise, funds, manpower and commitment to protect and conserve the endangered species and other wildlife that inhabit Matagorda Island. The broad support this bill has engendered is evidenced by the sound endorsement it received by the House of Representatives which passed the bill by voice vote on the suspension calendar.

I thank you for this opportunity to appear before this Committee, and appreciate the inclusion of this complete statement into this record. I would be happy to answer any questions you may have.

Subc

Mr. Chairman, Members of the Committee:

My name is Perry R. Bass. I am the Chairman of the Texas Parks and Wildlife Commission.

I welcome this opportunity to appear before you and to join with the National Audubon Society and the Commissioner of the General Land Office of the State of Texas in support of S.696. The National Audubon Society has a distinguished record over many years for its successful efforts to save the magnificent whooping cranes and other protected wildlife that use Matagorda Island. S.696 ratifies an agreement between the federal government and the State of Texas that will clearly further that effort, because the Agreement provides that the state-owned wetlands on Matagorda Island will be placed by easement into the National Wildlife Refuge System and that both state and federal lands on Matagorda Island will be under unified management, utilizing the principles developed for the National Wildlife Refuge System. The easement also prohibits the construction of a causeway, commercial development, and recreational activities that are incompatible with the primary purposes of the refuge.

The Texas Parks and Wildlife Commission, representing the State of Texas, has had a long-standing interest in managing Matagorda Island since the federally-owned portion was declared excess by the Air Force in 1975. As you know, the Air Force seized this land in World War II and used it as a bombing range. The Air Force continued to use it for military purposes until 1975. Since 1975, the federally-owned portion of the Island has been administered by the Fish and Wildlife Service, although without much capital investment because of its uncertain status.

The State's interest in Matagorda Island stems from the unique factual situation on the Island. The State owns and manages the Island's wetlands, which, in terms of biological productivity, constitute the most valuable portion of the Matagorda Island system. In fact, the valuable habitat for whooping cranes on Matagorda Island is the state-owned

wetlands. While the federally-owned uplands serve as a buffer zone, the wetlands are the critical areas for feeding and other day-to-day activities of the whooping cranes. Because these wetlands are part of a trust fund for free public schools, the State cannot grant these wetlands to the federal government. However, all parties agree that unified management is desirable to bridge a difference in land ownership.

Because of this need to provide the unified management that will benefit the whooping cranes and other wildlife, the State has agreed to put its wetlands into the National Wildlife Refuge System, in exchange for the right to manage the federally-owned uplands. The State's management must be conducted pursuant to the requirements of the National Wildlife Refuge System, not only on the federally-owned uplands, but also on the State owned wetlands. In addition, the State's operation plans must be reviewed and approved by the Fish and Wildlife Service. Thus, the acreage on Matagorda Island included within the refuge system has more than doubled pursuant to the Agreement, and now includes the most valuable habitat for Whooping Cranes and other endangered and migratory birds that use the Island.

The Agreement prohibits intensive development for recreation. Not only is the State required to manage the Island according to the National Wildlife Refuge System rules, but it has also agreed that wildlife concerns will be preeminent, and any recreational uses that interfere with these wildlife practices will be discontinued. Thus, if the whooping cranes' range continues to expand, the State has agreed that its operations on Matagorda will place the whooping cranes' and other endangered species needs first. Moreover, since the State has carefully enumerated its limited plans for development, no conflict between the occasional visitors and wildlife should develop.

The non-wildlife uses that are permitted by the Agreement, such as grazing, seismic exploration, and oil and gas development, are all currently allowed under Fish and Wildlife Service administration; these activities will be conducted in a manner that is compatible with protection of the whooping cranes. Since a causeway and regularly-scheduled ferry are prohibited by the Agreement, access to the Island is limited. The number of visitors and types of activity on the Island will be comparable to that under current Fish and Wildlife Service management.

MATAGORDA ISLAND REVISED CONCEPTUAL PLAN

PREPARED BY THE STAFF OF

TEXAS PARKS AND WILDLIFE DEPARTMENT

OCTOBER, 1982

MATAGORDA ISLAND REVISED CONCEPTUAL PLAN

I. INTRODUCTION

Matagorda Island is a unique natural resource, one of the few barrier islands in the nation that remains in an undeveloped state. This Conceptual Plan provides a broad outline of Texas Parks and Wildlife Department's management goals for Matagorda Island which places wildlife concerns in a pre-eminent position, with special focus on the endangered and threatened species that use Matagorda Island. To the extent consistent with this goal, low intensity, non-facility dependent, recreational use will also be permitted.

Under Texas Parks and Wildlife management, Matagorda Island will consist of two functional units. The Matagorda Island Wildlife Management Area and Wildlife Conservation/Park Area will consist of 19,000± acres of Federally-owned uplands, 21,568± acres of State-owned uplands and wetlands, and 3,325± acres of Gulf lands. However, Parks and Wildlife proposes to manage all uplands, whether State or Federally-owned, pursuant to the same goals. Furthermore, the philosophy of the Texas Parks and Wildlife Department (Department) relative to management of the State-owned marshes is that little needs to be done to improve this resource. Thus, habitat modifications are not anticipated. Recreational activities, including current hunting and fishing practices on these marshes, will basically be left intact unless found to be detrimental to the habitat or associated wildlife. Consequently, provisions in this plan for habitat management address the more upland portions of the Island.

The Cooperative Agreement contemplated between the Department of Interior and the State of Texas (represented by the Texas Parks and Wildlife Department and the General Land Office) establishes the roles of these three parties regarding the management of Matagorda Island. The Cooperative Agreement requires both annual operating plans and a master five year plan. These plans will contain much of the detail that can only be generated after Texas has the opportunity to further study the Island. A five year plan will detail the Texas Parks and Wildlife Department's management goals and priorities. An annual operating plan implementing the five year plan will also be developed that will specify the staff levels necessary to implement these goals. The five year and annual operating plans will be submitted to the Fish and Wildlife Service and the General Land Office in accordance with provisions in the Cooperative Agreement.

Finally, this Conceptual Plan is an essential element to the analysis of environmental impacts of the proposed federal disposition of the 19,000 acres analyzed in the Draft Environmental Impact Statement (July 1982), since the Conceptual Plan provides the outline of Texas proposed management.

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II. MANAGEMENT

A. The Concept

Matagorda Island provides an opportunity for the State of Texas to complement its existing ownership of the Island's principal wetlands by providing an integrated habitat management program for the entire barrier island.

The wildlife, especially the endangered and threatened species, are a major part of the natural resources of Matagorda Island. Consequently, all recreational activities and developments would be secondary to protection of these species. There will be no causeway or vehicular ferry, and private development will not be permitted on the Island.

The management program would not only conserve and enhance the wildlife resources of the Island, but also offer a base for a wide variety of low intensity traditional and unique recreational activities. In order to maximize both of these objectives, the State proposes to divide the Island into two functional units: a Wildlife Management Area and a Wildlife Conservation/Park Area (Appendix C).

The Wildlife Management Area (approximately 36,568 acres) would comprise chiefly the central Federally-owned uplands and the State-owned property composed primarily of tidal marsh and 22 miles of State-owned Gulf lands. This Wildlife Management Area would emphasize programs to benefit all wildlife species, with priority given those that are endangered or threatened.

The Wildlife Conservation/Park Area would include the beach near the base facility; these 2 miles of beach will be managed. The Wildlife Conservation/Park Area also includes the impacted Federal lands, including the Air Force base facilities with an adjoining small buffer zone and interpretive area (the remaining 7,325 acres).

For many purposes, the proposed boundaries would be essentially administrative rather than restrictive in that cooperative management and use of the Island would exist among the State agencies and divisions involved. However, the park recreational opportunities will be concentrated in the Wildlife Conservation/Park Area. Only recreational uses such as hunting, fishing, bird watching and other wildlife-oriented activities would be allowed on the Wildlife Management Area.

The basic concept of the Texas Parks and Wildlife Department administration of the Island includes conserving habitats for endangered species and other migratory and resident wildlife, and providing compatible recreation opportunities emphasizing a diversity of resource-related rather than facility-dependent activities. The recreation program would be a low intensity one, providing minimum improvements for a variety of day-use activities and overnight use limited to designated areas.

B. Wildlife Management Area.

Matagorda Island and the adjacent wetlands are used by a diversity of wildlife species. Many of the Island's species are resident, but numerous migratory species are important users of the wetland habitat already owned by the State. A 1973 report, Matagorda Island: A Natural Area Survey, prepared by the Office of Research of the Lyndon B. Johnson School of Public Affairs for the Parks and Wildlife Department listed 14 mammal species, 210 avian species, 19 fish species, 35 reptile species, and 6 amphibian species as occurring on the Island and adjacent tidal marshes. An additional 8 species were also observed by Texas Parks and Wildlife Department peregrine falcon survey crews between 1972 and 1978: brown pelican, white-tailed kite, Swainson's hawk, reddish egret, yellow-shafted flicker, frigate bird, groove-billed ani and western massasuaga. Sea turtles, including the ridley, loggerhead, leatherback, and hawksbill have washed ashore dead on the Gulf side of the Island. Of these 292 species, 9 are federally listed as endangered or threatened. The federally listed species are brown pelican, bald eagle, peregrine falcon, whooping crane, sea turtles (Atlantic ridley, hawksbill, leatherback, loggerhead) and the American alligator. These species are also listed as state endangered or protected nongame species. Added state protection is also provided for the white-faced ibis, swallow-tailed kite, osprey and the least tern.

Although a large number of migrating bird species have been recorded for the Island, some occur infrequently and only in small numbers during migration. The Federal portion of Matagorda Island, composed principally of uplands, has habitat in the form of intermittant fresh to brackish wetlands for aquatic and semi-aquatic birds which comprise approximately one-half of the bird species recorded. The upland portion of the Island thus has some significance in providing habitat for wintering and migrant birds. The State-owned tidal marshes provide ideal habitat for a wide variety of aquatic and semi-aquatic birds including whooping cranes and brown pelicans.

The primary objective of the wildlife management program would be the conservation and enhancement of suitable habitat for federal and state listed threatened, endangered and protected nongame species. When compatible with the stated objective, species management on the Island would be directed toward migrant and resident species. In addition, the Texas Parks and Wildlife Department would provide public hunting opportunities when consistent with management of the wildlife resources in general. Any such opportunities that would be provided would be managed to insure that they would not be likely to jeopardize the continued existence of any federally listed threatened or endangered species.

The quality of the State-owned tidal marshes does not need to be improved. Thus, no efforts will be made to alter this part of the Island. Instead, management will be primarily directed at controlling existing access to those areas determined to be essential to migrant and listed species during critical periods. The use of those modes of

transportation which prove to be detrimental to the wetland habitats will be restricted or prohibited.

Initial resource management efforts proposed for the uplands of the wildlife area would be to restore and/or maintain native vegetative communities and freshwater availability. The need for additional management practices is evidenced by existing conditions resulting from undergrazing and overgrazing on a portion of the Island and the introduction of coastal bermuda grass, all of which resulted in degradation of wildlife habitats. The use of controlled burning as a beneficial wildlife management tool similar to the program instituted under U. S. Fish and Wildlife Service administration of the Island will be continued. The Texas Parks and Wildlife Department will consult and cooperate with the U. S. Fish and Wildlife Service in the development and implementation of any management plan to insure the conservation of state and federally protected species of mutual concern to the two agencies through its annual and five year plans. The General Land Office will retain title to the mineral rights on State lands. However, the existing State environmental codes will be used to protect the wildlife resources that might be impacted by the mineral activities.

Approximately 19,000± acres of the Federally-owned land and 6,000 of the State-owned land are upland acres. The conservation techniques discussed below will enhance upland habitat for all species, including nongame species, by creating habitat diversity and dependable food sources.

1. Wildlife Resource Conservation Measures

(a) Endangered Species. In addition to the upland habitat preservation and enhancement, the Texas Parks and Wildlife Department would adopt programs needed to conserve listed endangered and threatened species. Further detail on each of these species will be contained in the first annual operation plan, including but not limited to the following activities:

1. Whooping Cranes: The whooping cranes are wintering residents within the State-owned bayside marshes adjacent to the Island. The bay side of the Island in the vicinity of Panther Point has been favored by whooping cranes over the past several seasons. Whooping crane use of the bayside marshes is expected to increase as its population continues to expand. Flexible recreational utilization of the Island combined with normal habitat enhancement measures on adjacent uplands should be beneficial to the continued preservation of the cranes. Activities which disrupt the cranes would be curtailed within areas customarily utilized by whooping cranes.

2. Sea Turtles: Sea turtles (species undetermined) have reportedly nested on Matagorda Island some six times in the past 30 years. In addition, subadults regularly and adults occasionally occur offshore of the Island. The Gulf beach could serve as a site for increased nesting activitiy if Atlantic ridley introductions prove

successful on Padre Island National Seashore, some 50-60 miles southwest of Matagorda Island. An ongoing "Operation Headstart" program, the cooperative efforts of the National Park Service, U. S. Fish and Wildlife Service, National Marine Fisheries Service, the Texas Parks and Wildlife Department, and Instituto Nacional de Pesca, is currently in the fifth year of a ten year plan to establish a secondary nesting site for the Atlantic ridley. The landing strip on the Island would facilitate rapid transportation of eggs and/or young to the beach. Sections of the beach could be closed should sea turtle introductions to Matagorda Island be found feasible.

3. Brown Pelican: The brown pelican has shown a remarkable comeback in recent years. Cooperative National Audubon Society, U. S. Fish and Wildlife Service, and Texas Parks and Wildlife Department surveys have shown the pelican increase from a low of 2 nesting pairs in 1965 to 54 nesting pairs in 1981. This increase is attributed to the reduction in the occurrence of the chlorinated hydrocarbon group of pesticides in the bay environment. Although brown pelican nesting has not been reported as occurring immediately adjacent to Matagorda Island, historically pelicans did utilize other islands within Matagorda Bay. The bay side of the area with its numerous spoil banks and small islands offers the opportunity to test the feasibility of establishing additional colonies of brown pelicans on the Texas coast. The Texas Parks and Wildlife Department has in its long-range management plan the reintroduction of the brown pelican if surveys of historic nesting areas and pesticide levels indicate such a program is feasible. Should test reintroductions be successful, visitor access to nesting areas during the nesting season would be restricted.

4. Peregrine Falcons: Peregrine falcons are migrants along the Matagorda Island beaches during the fall and normally are not observed during other periods. Normal migrations occur during September - October. The undisturbed Gulf beach offers an excellent site for trapping and banding operations as they relate to the fall migration of the peregrine falcon. During fall migrations, visitor access to areas used by falcons would be restricted as deemed appropriate.

5. Bald Eagles: Bald eagles occur only infrequently on the Island, since suitable nesting, roosting or hunting habitat is generally unavailable.

(b) Resident and Migratory Wildlife. Currently little data exists on kinds of preferred sites used by most nongame species. Initially, efforts will be directed toward determining species utilizing the Island complex and preferred use sites. Quarterly surveys will be made to determine species use by habitat type. Data analysis to determine species composition and species change over time will also be attempted. Habitat will be managed to retain or increase species number and species diversity. Habitat management on the Island would benefit all species including game animals. As such, game and nongame species management would be compatible with no attendant adverse effect to either group. The lack of hunting perches and suitable

nesting sites largely precludes raptor use of the Island. Experimental development of hunting perches and nesting sites will be implemented to determine if the breeding population could be increased. Some existing power line poles will be retained for possible use by raptors. Nesting platforms will be constructed and their use by raptors recorded.

One known rookery containing black skimmers (Rhynchops nigra) is located on Panther Point. The unit is also used as a summer loafing area and wintering area for many migrant species including white pelicans, egrets, Roseate spoonbill, herons, terns, gulls, plovers, and waterfowl. The Department will continue to monitor and restrict or prohibit any activity which adversely affects this rookery or loafing area within the unit.

2. Habitat Conservation/Enhancement Measures

(a) Uplands. The management of the uplands will have no impact on the wetland habitat or fauna. In fact, efforts will be made to ensure any such adverse impacts do not occur.

1. Burns: Prescribed burning has been used for many years in upland coastal marsh sites as a management tool for waterfowl. Such burns open dense stands of gulf cordgrass and provide a feeding area for a variety of wildlife species during late winter and spring. Burning has been incorporated into the Fish and Wildlife Service's management program on Aransas National Wildlife Refuge including the Matagorda Island Unit. The Fish and Wildlife Service uses prescribed burns in managing habitat for whooping cranes. However, the use of burns in the marsh unit is practical only within those areas containing stands of gulf cordgrass. Fire will continue to be used as a management tool by the State.

Burns are utilized extensively by waterfowl, sandhill cranes, deer, rabbits, quail and small mammals. It is also expected that such burns would provide feeding areas for such species as willits, rails, curlews, avocets, killdeer, plovers and snipes.

Burns in these areas will be made at intervals from late October through December. It is anticipated that controlled burns will generally be less than 1,000 acres in size. As a general practice no more than one-third of the gulf cordgrass areas will be burned yearly.

2. Plantings: Large areas of the Island have been planted in Coastal Bermuda grass. As a result of these plantings, the potential carrying capacity for all wildlife species have been lowered and their numbers reduced. Most monotypic pastures do not benefit wildlife but does benefit livestock. Coastal Bermuda fields are frequently referred to as "biological deserts" since species diversity is drastically reduced and many species are eliminated. As such, attempts will be made to reduce or eliminate the acreages in Coastal Bermuda grass.

Currently, little wildlife use of these fields has been observed other than as a resting area. Such fields can be improved by burning, planting winter wheat or rye, etc. Plantings and burnings would provide increased nutritional levels of migrant species prior to onset of spring migration to the breeding grounds.

Experimental plantings may be accomplished on the upland sites to determine their effectiveness in providing food and cover for both migrant and resident wildlife species. Soil salinity may limit types and amount of plantings which would be considered. Two 5-acre food plots will be established initially on each of four ranges. One-half of each of these fenced food plots would be planted to adapted grains in the spring and the remaining half planted in winter to adapted seed producing grasses to provide a dependable source of food for seed-eating resident and migrant wildlife.

Plantings would include woody plants as well as herbaceous plots. Woody plants to be considered would include but not be limited to salt cedar, black mangrove, dewberries, and any other woody plants which are known to grow on similar type habitats. Previous experience on the Island indicates that salt cedar or other plants including McCartney rose are not prone to spreading. Herbaceous plantings of Indian corn, millet, rye, wheat and/or sunflower will be utilized to determine their effectiveness in augmenting the native food source on the unit. Such plantings will also provide a closed canopy and an open understory for the smaller wildlife species as well as provide the increased nutritional levels needed prior to onset of spring migration.

3. Grazing: Fencing will be accomplished to evenly distribute livestock grazing pressure, protect areas sensitive to grazing and protect plantings where necessary, and restrain cattle from encroaching on the habitat of endangered and threatened species.

Moderate grazing by domestic livestock (cattle) is a desirable management tool to maintain flora and fauna diversity. With no grazing, the island flora tends to develop toward a climax grass association, thus reducing species diversity.

A 4-pasture, one herd-type of grazing system appears suited for use on the Island. Existing fenced pastures are similar in size. Leasing for grazing would be on an animal unit per month basis. Grazing contracts would generally be proposed for a multi-year period and grazing fees would accrue to the Fish and Wildlife Service or General Land Office.

Initial base stocking rate would be determined following the completion of a range analysis. This rate could vary from year to year depending on rainfall and other climatic factors. Plant communities would be monitored by Department personnel to ensure they are not damaged as a result of overutilization.

4. Discing: Most wildlife species utilize transition zones of vegetation often called "edge." Discing will increase this

vegetative "edge effect." Shallow discing, particularly in the sandy soil types, increases available food supply for seed-eating species. Discing also forms effective lanes which will reduce potential impacts of wild fires by limiting the area which would be burned.

5. Impoundments: Availability of fresh water may limit, particularly during summer and fall drouths, the number of species and duration in which species may utilize the upland portion of the Island. Many existing ponds, as a result of siltation, now contain water only during the wetter years. The feasibility of renovating these ponds will be initiated and its effect on the wildlife resource will be determined prior to renovation. Ponds may also be constructed to provide additional fresh water sources for wildlife and to attain more uniform livestock distribution. Such construction will be limited to those upland sites which are now intermittent ponds.

(b) Wetlands. The wetlands on the bayside of Matagorda Island are characterized by shell spits and ridges, shallow marshes and vegetated barrier flats.

Spartina alterniflora (smooth cordgrass) occurs in shallow saline water in areas that are inundated periodically by tides. In some locations, it occurs as a solid band or as scattered patches which alternate with bare mudflats or shell beaches. Batis maritima (maritime saltwort) and Salicornia virginica (glasswort) are widespread on those mudflats just above mean water level.

Zannichellia palustris (poolmat) and Ruppia maritima (Widgeongrass) are the most common submergents encountered in the shallow ponds and marshes on the barrier flat. Emergents include Echinodorus rostratus (burhead), Scirpus americanus (swordgrass), and Juncus roemerianus (needlegrass rush).

Blackmangrove (Avicennia germinans) occurs on mudflats and on the marsh channel banks on the northeast end of the Island and on land areas between the Island proper and Port O'Connor.

The Texas Parks and Wildlife Department's philosophy for management of the wetlands is unchanged from that of the General Land Office since no habitat enhancement measures will be instituted for these areas.

C. Wildlife Conservation/Park Area

The conservation policy of the Texas Parks and Wildlife Department is to manage park resources so as to ensure optimum public benefit while preserving the natural and scenic qualities. All park recreational management, use, and development will be subordinate to and compatible with the needs of threatened and endangered wildlife. Recreational development on the Island would be compatible with wildlife management of the Island. Of the three habitat components found on the Island -uplands, beaches, marshes - structural improvements would occur only in the old base area located on the uplands which have already been heavily impacted and the 2 mile stretch of managed beach. Primary recreational use would occur along the

beach, and would be limited to picnicking, fishing, walking, beachcombing, swimming and primitive camping confined to the 2 mile stretch of managed beach. Other uses such as hiking, nature study, hunting, and bay fishing on uplands and marshes would be restricted to designated areas and to times when potential impacts to endangered or threatened species would not occur.

Although the Air Force base facilities comprising the central portion of the park area are a disturbing factor to the immediate environment, the surrounding lands are in a relatively natural condition or have the potential for conversion to a natural state. Management practices in these areas would be designed to achieve and maintain natural vegetative communities which would eventually provide for a stable ground cover, aesthetic enjoyment, and interpretive opportunities. Under this proposal, no vegetative management or maintenance would be required along the majority of the Gulf beach and dunes area, although a 2 mile strip of beach near the base facilities would be managed and the adjacent dunes could be managed for maximum stability through occasional vegetative plantings and protection from overgrazing.

D. Transportation

Matagorda Island's isolation contributes to its attractiveness and is one of the primary factors in the preservation of such an environment for human experience.

1. From Mainland. No causeway, highway, bridge, ferry, public airport, or similar mode of transportation providing land vehicle access to the Island will be permitted, except that the Texas Parks and Wildlife Department and the General Land Office, and the Fish and Wildlife Service and their respective agents and assigns, may utilize all modes of transportation necessary for the proper administration of the Island. No land vehicle, aircraft, seaplanes, or helicopters will be allowed on the publicly-owned portion of the Island except as authorized for administration, management, enforcement, and maintenance of the property.

Access to the Island would be dependent upon private individuals who own boats and private charter boats. The Texas Parks and Wildlife Department would not provide pedestrian ferry service itself, but rely on the type of transportation currently provided by the U. S. Fish and Wildlife Service. Private charter boats in the area have responded to the public demand to gain access to the island under U. S. Fish and Wildlife Service administration and have provided these services on a fee basis. The existing docking area will be rehabilitated, but not expanded. The existing ferry channel, utilized by the Air Force, should remain adequate for shallow draft boats and barge use without additional dredging for another 10 to 12 years. Other than the Texas Parks and Wildlife Department, U. S. Fish and Wildlife Service, and the General Land Office vehicles, and vehicles associated with research, leases and contracts, no other motor vehicles, would be allowed on the Island.

2. On the Island. Once visitors arrive at the Island, the distance from the potential headquarters to the various attractions on the Island would greatly restrict visitor use and enjoyment, unless some means of on-island transporation is provided. One form could be a large rubber-tired wagon equipped with benches and towed by an independent vehicle. This would require a minimum of investment and allow use of the towing vehicle for additional purposes. A shuttle system could make scheduled runs from an assembly area to the managed beach area and periodic runs down the main island road to serve dispersed recreationists, should demands justify and when there would be no conflict with endangered wildlife species present. In addition, the system could also be utilized to help disperse hunters during the hunting season.

E. Development and Use.

1. Buildings and Facilities. Under State administration, Texas Parks and Wildlife Department would manage all the Federal acreage and receive use of all buildings, structure and facilities on Matagorda Island and at Port O'Connor on the mainland. Minimal improvements to accommodate visitor use would be primarily confined to the Base area and managed beach area. At least two down-range comfort stations will be developed as will observation towers to facilitate wildlife-oriented recreation. No private residential, commercial or industrial development would be allowed.

(a) Base Area. All buildings, utilities and facilities not selected for use or required to support the Wildlife Conservation/Park Area and Wildlife Management Area would be surplused and removed from the site.

The existing base facilities on the Island could function as a central base of operations for the Texas Parks and Wildlife Department functions (Appendix D). Ferry dock facilities are also present on the Island, as well as boat slips for individual visitor use. These docks will be utilized but not expanded, under the Texas Parks and Wildlife Department's administration. With little modification a headquarters and office could be developed from the existing Air Force Warehouse Building. Other existing buildings could be used with modification to provide a maintenance building, a carpenter shop, a vehicle storage building, and overnight accommodations for the Texas Parks and Wildlife Department personnel. The total number of square footage of buildings on the Island is 29,953+ square feet contained in 44 buildings. Texas Parks and Wildlife Department will utilize approximately 6 of these buildings in operating the Island. The Texas Parks and Wildlife Department will maintain the currently existing 24 miles of primary road, and the 22 miles of secondary roads but none of the runways.

The Air Force base was designed to be essentially a self-contained unit, including utilities. However, most of the utility system is obsolete or has deteriorated and a great deal of repair and replacement would be needed to serve public needs at the minimum level of development previously described. A new and smaller

water system would be engineered to provide water for both drinking and nonconsumptive uses. The Texas Parks and Wildlife Department will provide for approximately 2,000 gallons of storage capacity for visitor usage. The power to pump this water will be wind generated, where possible; the small electric generator of some 15 to 75 kva will be used as a backup supply. The existing water distribution system would be inspected and where feasible utilized, thereby minimizing the impact of new construction. Likewise, either a small sewage treatment plant or septic fields would be engineered to serve the restrooms, showers and the Texas Parks and Wildlife Department facilities.

Electrical service from the mainland has been discontinued, and base facilities now utilize propane, diesel and wind-powered generators. The Texas Parks and Wildlife Department would continue the use of wind-powered generators to the fullest extent to supply the electrical needs on the Island. The Texas Parks and Wildlife Department, due in part to the constant threat of hurricanes, will design and employ a self-contained support system that will adequately service the limited development planned. Any electrical extensions would utilize existing above-ground poles or be placed underground. An adequate communication system to the Island to serve operational and security purposes would be established.

(b) Wildlife Conservation/Park Area. The Island resource could offer visitors a variety of recreational opportunities with a minimum of facility improvement. An analysis of proposed island usage and facility improvements is presented below for each of the major activities proposed for the Island:

1. Nature Study: Many of the features that make Matagorda Island an attractive recreational and wildlife resource also provide ample opportunity for interpretive uses. The Island should prove to be especially popular with bird watchers due to the presence of waterfowl and migrant species. Use of additional waterfowl blinds and/or additional structured deer stands could provide additional opportunity for wildlife observation.

The series of inland ponds adjacent to the north end of the base offer an excellent opportunity for interpretation of Island ecology. A simple nature trail could be constructed and interpretation facilities, either exhibits or a brochure, could be provided. In addition to this specific area of interpretation, a general information brochure concerning Island activities and attractions could also be developed.

2. Camping: Matagorda Island could be utilized on a day-use basis; however, in order to fully appreciate the many aspects of the Island, an overnight stay would be desirable for some visitors. The only initial provisions for overnight use of the Island would be primitive camping. Later, two designated and maintained camping areas would be provided, an inland camping area on the base ground adjacent to a restroom with showers and a primitive beach camping area on the 2 mile stretch of managed beach near the base. Public use will be monitored and adjusted to minimize impacts to the resources.

3. Beach Activities: The extremely wide and attractive Gulf beach on the Island should be a primary destination for visitors. A 2 mile stetch of beach near the base headquartes is proposed to be managed and patrolled for active beach uses. Primitive camping could be allowed in the 2 mile area and chemical or permanent type toilets and no more than 30 picnic tables with shade shelters would be provided. The proposed on-island shuttle system could serve the use area and disperse visitors along the beach as well as other designated use areas on the Island. Existing short spur roads from the main island road could be maintained to provide emergency beach access and facilitate hunter distribution to designated areas on the remainder of the Island. No concessions would be allowed on the beach. Any public service concessions, contract or Texas Parks and Wildlife operated, would be confined to the base area.

4. Historical and Archeological Research and Preservation: Matagorda Island offers a unique opportunity in the area of historical and archeological research of cultural materials of human development in the New World. The relative isolation and inaccessibility of the Island, and the fact that erosion has not been as extensive as on other Texas coastal islands, have so far prevented major destruction of sites by natural forces, urban development, and pothunters. Information on prehistoric occupations and ways of life available on the Island are very important and relevant to the understanding of the place of barrier islands in the coastal subsistence patterns of early Texas Indians.

A thorough survey, recording and studying prehistoric and historic cultural materials and sites should be carried out on Matagorda Island. This should be followed by the marking and designing of interpretive projects for the more significant sites. Such a program would be invaluable for the recording and preservation of the fast diminishing, nonrenewable sources comprising an important part of the cultural heritage of the State of Texas.

2. Wildlife Habitats

(a) Research and Surveys

1. Fisheries: The ongoing fishery surveys to monitor coastal finfish and shellfish resources of the bays will be continued. Productivity data are obtained by monthly sampling at specific sites. The sites sampled are randomly chosen on a monthly basis.

2. Wildlife: The wetlands will be surveyed to determine the number and species composition of shorebird rookeries within the unit. Rookeries will be monitored to develop information on hatching success, fledging rates, and causes of failures. Where possible, efforts will be made to reduce or eliminate that factor or factors contributing to the rookery failure.

Surveys will be conducted to develop differential use by species and, in particular, preferred use areas by listed

endangered and threatened species. Weekend aerial surveys, initiated in 1976, will be continued to ensure that hunting and fishing activities do not adversely impact upon normal movements of wintering whooping cranes.

The use of plantings, burns, and impoundments will be evaluated to determine their effectiveness in increasing wildlife resource use. Additionally, impacts of these enhancement activities on existing wildlife uses will also be evaluated. Attention will be directed toward determining benefits to listed endangered and threatened species versus impacts on current use of areas by other wildlife species. Any such management activity which is determined by the Department to be detrimental to the wildlife resources and/or wetland habitats will be restricted or prohibited.

(b) Compatible Research by Others. Where compatible, the Department would permit individuals to conduct specific studies which would provide life history information on individual species or provide management data.

A detailed research proposal would be submitted with each scientific permit application. Proposed activities would not be allowed until approved by the Parks and Wildlife Department. The Department will not approve any activities which would adversely impact upon the habitat or population of endangered or threatened species.

3. Public Use. Allowable recreational uses will include fishing, hunting, nature studies and hiking. Overnight camping would be allowed only on the Wildlife Conservation/Park Area (Appendix C). The Island should prove to be especially popular with bird watchers and as such blinds and structural deer stands could provide additional opportunity for wildlife observation. Trails and boardwalks in conjunction with interpretive information could also provide information on wildlife management practices being implemented.

The Parks and Wildlife Commission encourages public utilization of the Department's management areas consistent with the purpose of the areas. Management areas offer the public an opportunity to observe wildlife in a natural setting as well as providing the public with a better understanding of wildlife ecology and management. Monitoring will provide information as to whether access to certain areas should be restricted. Chapter 81, Parks and Wildlife Code, provides broad discretionary authority to the Parks and Wildlife Commission to allow public use when consistent with sound biological management.

No additional access areas will be developed for the State-owned (General Land Office) bayside marshes. It is anticipated that all visitors coming to the Wildlife Conservation/Park Area and/or Wildlife Management Area must enter through the headquarters at the old Air Force base, except fishermen or waterfowl hunters who utilize the bayside marshes only would not need to check in. However, all persons planning to gain access to the marshes from the Island uplands

must check in as would those gaining access to the uplands from the bayside marshes. The Parks and Wildlife Department will thus control access and when necessary even limit access to protect the habitat and species present.

(a) Hunting. Carefully supervised hunts on the Island will be continued. Hunting would occur primarily between September and January. Hunting activity would not occur on all portions of the Island at any one time but would be on a rotational basis, by areas. Public hunting will be directed primarily at deer, feral hogs, turkey, quail, doves, and waterfowl. Hunting of coyotes will be permitted if appropriate for population control.

(b) Fishing. Fishing rules and regulations will be established by proclamation of the Texas Parks and Wildlife Commission. It is anticipated that fishermen will be restricted to rods, reels, and flounder gigs. Minnow seines not exceeding 20 feet in length and cast nets could be used for taking bait. It is further anticipated that fishermen will not be allowed to use trot lines, sail lines, nets, dredges, etc. within the Wildlife Management or Wildlife Conservation/Park Areas.

1. Bayside Wetlands: Historically, the bayside marshes have been utilized by hunters to take waterfowl and much of this hunting activity occurs on weekends. Weekend surveys conducted by the Department have shown that this waterfowl hunting activity occurs primarily north from Pats Bay. If the Texas Parks and Wildlife Department determines that such hunting activities is adversely impacting the nongame wildlife resource, particularly the whooping crane, or the associated wetland habitats, it will take whatever action is deemed necessary to ameliorate such impacts.

Hunting in the bayside marshes will be limited to waterfowl and no permit will be required by persons hunting within the bayside marshes. Such taking must conform with the legal season, bag and possession limits, and means and methods provided by Texas Parks and Wildlife Commission proclamations. The waterfowl season normally occurs from mid-November to mid-January.

Types of conveyances used to gain access to the wetlands of the bayside marshes will be monitored to ensure such conveyances do not adversely impact the habitat or the wildlife resources. If such impacts occur, the Texas Parks and Wildlife Commission has full authority to regulate or prohibit the use of such conveyances in the wetland areas.

2. Upland Areas: Waterfowl hunting on the upland portions of the Island would be by regular permit during the waterfowl season. Such taking must conform to legal season, bag and possession limits, and means and methods provided by the Texas Parks and Wildlife Commission proclamation.

The Department recognizes that continuous hunting pressure may displace waterfowl at least temporarily. Hunting will

therefore be regulated to allow waterfowl to utilize favored feeding, resting and watering areas without undue disturbances.

Seasons, bag and possession limits, and means and methods for quail and dove hunting on the upland portion will be established by proclamation of the Parks and Wildlife Commission. Whenever quail and dove seasons overlap, both species could be hunted on the same day. Dove and quail hunting on the upland portion would be by regular permit only. Numbers of hunters would not be necessarily restricted but access would be controlled as appropriate by the Department whenever a buffer zone between the wetland areas and the uplands is needed to protect listed species.

The taking of fur-bearing animals will be in conformance with the stated objectives of the Matagorda Island Wildlife Management Area or to protect human health. Raccoons and badgers are the most common fur-bearing animals on the island. Racoon populations need to be controlled to reduce incidence of rabies and distemper within the population as well as reduce contact with the visitors to the island. Raccoons are known to be very destructive within rookeries and in some cases have caused abandonment of sites by colonial wading birds. Thus, control of the population needs to be implemented on a seasonal basis and control of individual animals needs to be implemented whenever they pose a threat to other wildlife populations. Taking will be accomplished in accordance with the provisions of Chapter 81, Parks and Wildlife Code.

Feral hogs are damaging to vegetative habitats, particularly near wetland areas. Since feral hogs are not a part of the native fauna of Matagorda Island, their populations will be controlled or eliminated if possible, as deemed appropriate by the Department.

All hunting activity within the area will be closely monitored to ensure such activities in no way impact on any threatened, endangered or unique wildlife species.

(b) Permits for Hunting and Fishing.

1. Wetlands: No permit will be required to fish in the wetlands or to hunt waterfowl in the bayside marshes.

Private camps are located on islands within this area. Such use by those individuals will continue to be allowed where permitted by the General Land Office. However, if these camps are destroyed, individuals will not be allowed to rebuild. Additionally, no expansion of existing structures will be authorized by the Texas Parks and Wildlife Department.

2. Uplands: A regular permit as defined by proclamation will be required of any persons taking waterfowl, mourning doves and quail. Cost of regular permits for quail, dove and

waterfowl hunting on wildlife management areas is established by the Texas Parks and Wildlife Commission and may be adjusted subject to provision of Chapter 81, Parks and Wildlife Code.

A special permit as defined in the adopted wildlife management area hunting, fishing and trapping proclamation shall be required of any person taking or attempting to take deer or other designated species of wildlife. The seasons, means, methods, bag and possession limits shall be in accordance with the Parks and Wildlife Commission adopted wildlife management area hunting, fishing and trapping proclamation.

The Parks and Wildlife Commission may also close all or parts of the Island to fishing, hunting, nature studies and hiking either permanently or on a temporary basis, to ensure the welfare of all wildlife species including listed endangered species. The Commission may restrict or prohibit the use of certain means and methods to protect human safety or the welfare of listed endangered species or other wildlife species.

4. Mineral Exploitation. Subject to valid existing rights, oil, gas, and other authorized mineral exploration and development will be permitted on the publicly-owned portion of Matagorda Island under applicable State and Federal laws, rules, and regulations necessary to assure protection of wildlife and other natural resources. The State environmental codes in the Fish and Wildlife Service approved Aransas National Wildlife Refuge Oil and Gas Plan shall be used as guidelines. Deviation from these guidelines must be recommended by the Texas Parks and Wildlife Department and General Land Office and approved by the Fish and Wildlife Service Regional Director.

F. Operation and Maintenance:

Operation and maintenance of Matagorda Island, due to its size and detachment from the mainland, would require, even at the most primitive level, a moderate staff of both parks and wildlife personnel and a significant investment in equipment and supplies.

Responsibilities of the island staff would include but not necessarily be limited to:

1. General administration of park and wildlife operations such as visitor contact, information service, law enforcement, patrolling, supervision of employees, purchasing, accounting, and clerical work.

2. Maintenance, repair, and servicing of recreation facilities such as restrooms, chemical toilets, camping areas, observation towers and hunting blinds, roads and trails, and any interpretive displays constructed.

3. Maintenance and repair of buildings and structures to be actively used in conjunction with the Wildlife Management Area and Wildlife Conservation/Park Area.

4. Operation and maintenance of utility systems including a water treatment plant, sewage treatment plant, auxiliary electric power plant, and radio communication systems.

5. Management of Island resources to include prescribed burning, discing, seeding, wildlife food plantings and some mowing around existing buildings.

6. Maintenance and repair of vehicles.

7. Operation of an Island transit system for the dispersal of hunters and recreationists on the Island.

8. Monitoring of mineral exploration and other contract work to avoid potential impacts on the Island.

In addition to these activities, several logistical problems are encountered when considering the operation of an island unit. Even though the Texas Parks and Wildlife Department does not currently envision transporting visitors to and from the Island, there would be a need to transport Department vehicles and equipment, as well as fuel and other supplies, to the Island. At the initial level of operation, it would be more economical to obtain these services on a contract basis from commercial concerns in the area. Once on the Island, vehicle maintenance and upkeep could be done by staff personnel and adequate fuel storage is available to accommodate Department needs for several months.

III. SUMMARY

The integrated management program proposed by the Parks and Wildlife Department for wildlife conservation and compatible public recreation for both the Federal and State lands would provide for multiple-use of the Island on a year-round basis. Conservation of threatened and endangered species and their habitats would be the primary consideration in all of the Texas Parks and Wildlife Department's activities. The Texas Parks and Wildlife Department also would manage the upland for conservation of resident and migrant species habitat and would provide compatible public hunting opportunity. State administration of the island would also provide visitors with an opportunity for public use of the island in its natural state.

Recreational use of Island resources would be provided through limited facilities for primitive camping, fishing and related beach activities. State administration would emphasize compatible resource-related activities. The State possesses both the ability and the resources to best manage and utilize this unique natural resource.

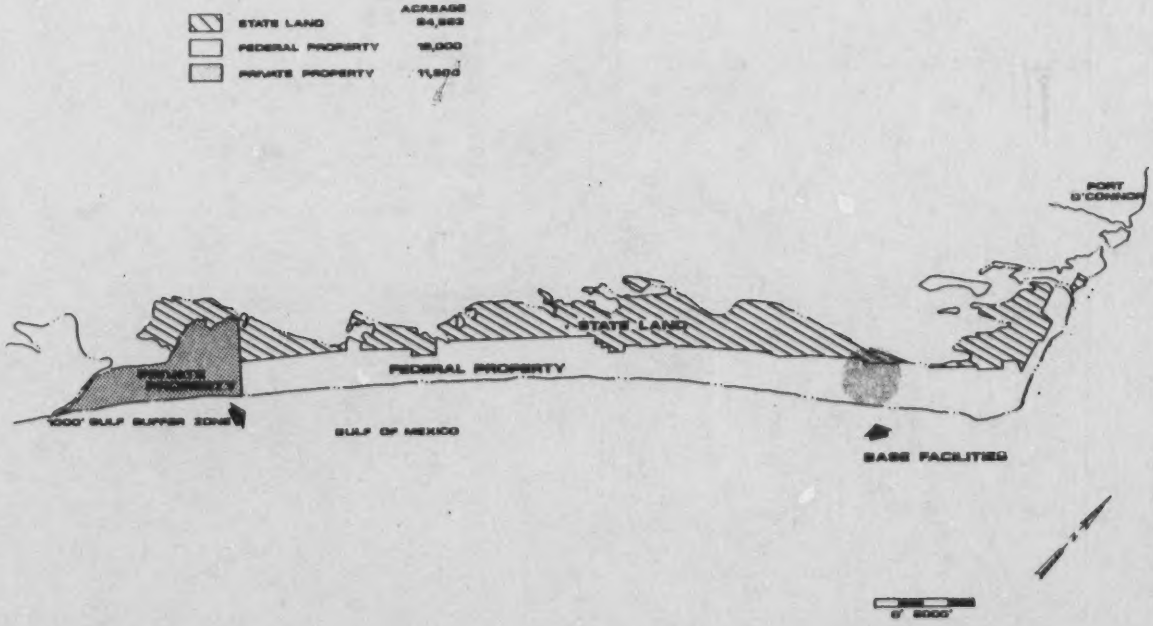
22-378 O—83——8

MATAGORDA
ISLAND
LOCATION MAP
CALDWELL
FAYETTE
COLORADO
LAVACA
WHARTON
GONZALES
DEWITT
JACKSON
VICTORIA
MATAGORDA
BRAZORIA
GOLIAD
REFUGIO
ARANSAS
SAN PATRICIO
Portland
Corpus Christi
NUECES
KLEBERG
KENEDY

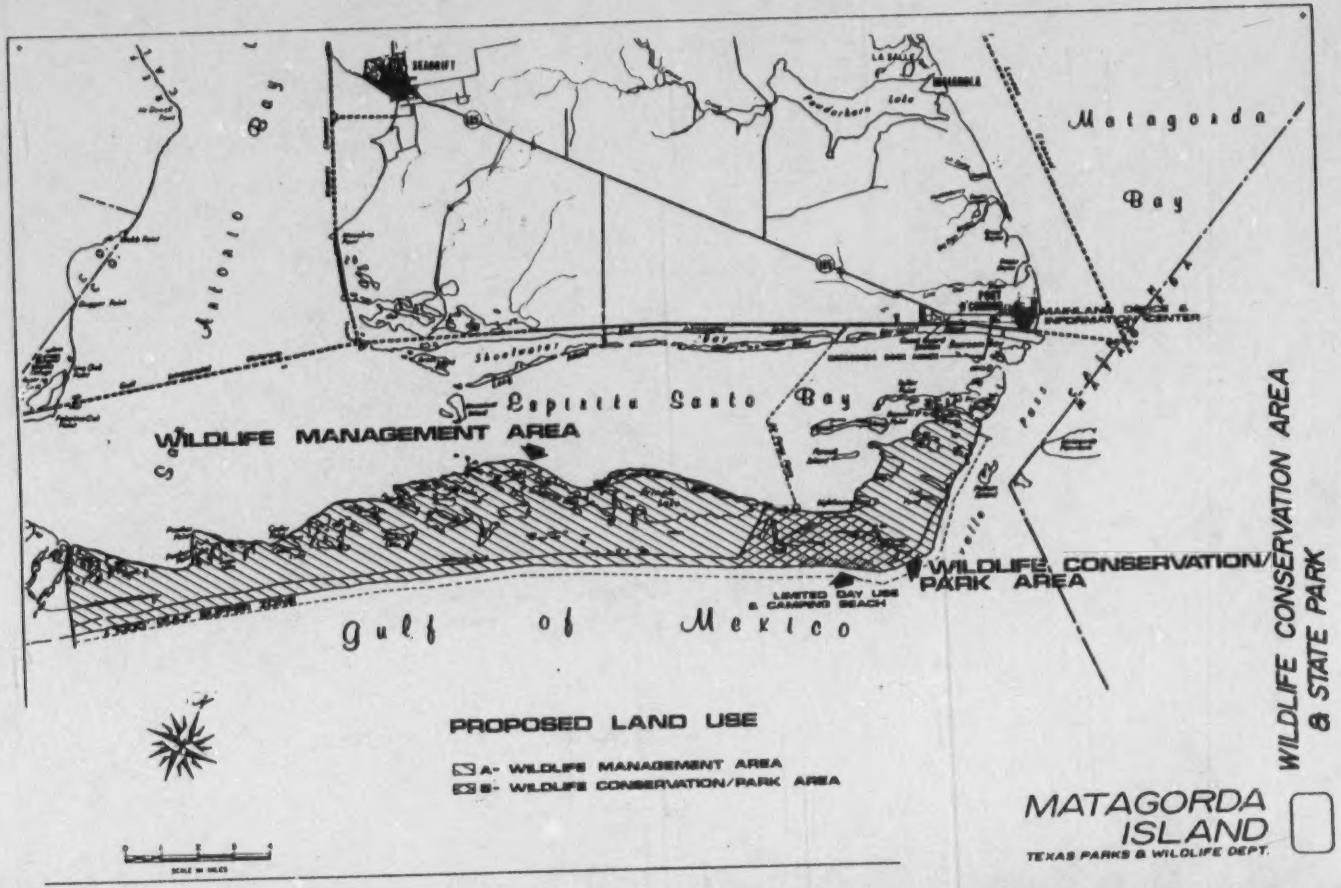
APPENDIX A

APPENDIX B

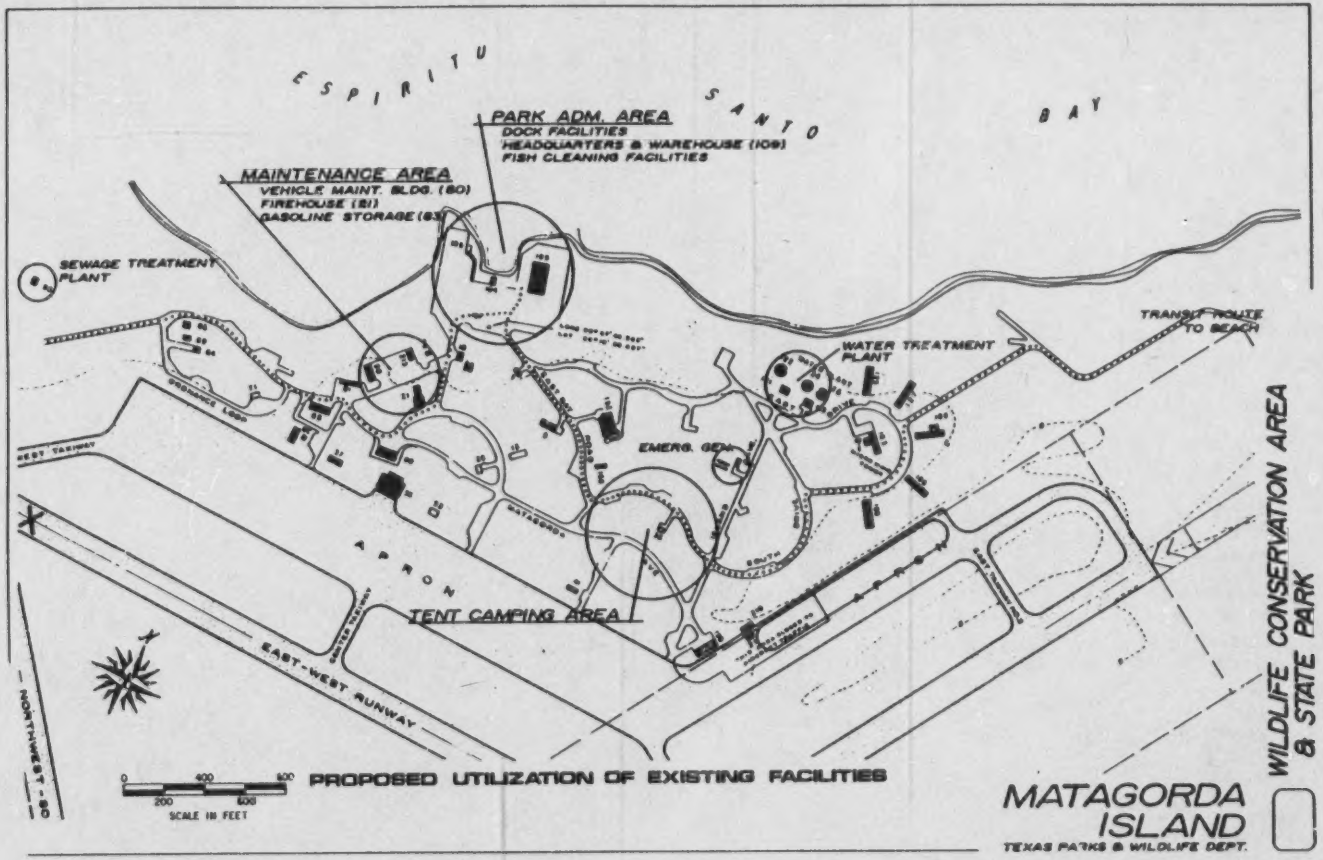
MATAGORDA ISLAND OWNERSHIP



APPENDIX C


Matagorda Bay
Espiritu Santo Bay
WILDLIFE MANAGEMENT AREA
WILDLIFE CONSERVATION/ PARK AREA
LIMITED DAY USE & CAMPING BEACH
Gulf of Mexico
PROPOSED LAND USE
A- WILDLIFE MANAGEMENT AREA
B- WILDLIFE CONSERVATION/PARK AREA
MATAGORDA ISLAND
TEXAS PARKS & WILDLIFE DEPT.
WILDLIFE CONSERVATION AREA & STATE PARK

APPENDIX D


ESPIRITU SANTO BAY
PARK ADM. AREA
DOCK FACILITIES
HEADQUARTERS & WAREHOUSE (109)
FISH CLEANING FACILITIES
MAINTENANCE AREA
VEHICLE MAINT. BLDG. (80)
FIREHOUSE (81)
GASOLINE STORAGE (83)
SEWAGE TREATMENT PLANT
WATER TREATMENT PLANT
TRANSIT ROUTE TO BEACH
EMERG. GEN.
APRON
TENT CAMPING AREA
EAST-WEST RUNWAY
NORTHWEST — SOUTHEAST
0 400 800
200 600
SCALE IN FEET
PROPOSED UTILIZATION OF EXISTING FACILITIES
MATAGORDA ISLAND
TEXAS PARKS & WILDLIFE DEPT.
WILDLIFE CONSERVATION AREA & STATE PARK

Defenders
OF WILDLIFE

May 19, 1983

Testimony of

Allen E. Smith, President
Defenders of Wildlife

Representing: Defenders of Wildlife
Sierra Club
Friends of the Earth
National Wildlife Refuge Association
Environmental Policy Center
Texas Committee on Natural Resources
The Whooping Crane Conservation Association

Before: The Senate Environment and Public Works Committee,
Subcommittee on Environmental Pollution

Subject: Legislation to Ratify and Approve an Exchange Agreement Concerning National Wildlife Refuge System Lands Located on Matagorda Island in Texas

1244 NINETEENTH STREET, NW • WASHINGTON, DC 20036 • (202) 659-9510

Mr. Chairman and members of the committee, I am Allen E. Smith, President of Defenders of Wildlife. I appear here today, however, in an expanded role as a spokesperson for Defenders of Wildlife, Sierra Club, Friends of the Earth, Environmental Policy Center, Texas Committee on Natural Resources, National Wildlife Refuge Association, and The Whooping Crane Conservation Association. This group, with a combined membership of over 500,000 environmentally aware citizens, shares a common concern. We believe that the Agreement entered into by the Secretary of Interior and the Governor of Texas, on December 8, 1982 transferring management authority over the Matagorda unit of the Aransas National Wildlife Refuge to the State of Texas is detrimental to the wildlife on Matagorda and represents a serious setback to the environmental goals for which the National Wildlife Refuge System "Refuge System" was established.

Particularly, we believe this agreement is an abdication by the Secretary of Interior of management responsibility over a crucial unit of the Refuge System; a system created to fulfill national environmental objectives and international treaty obligations. Not only does this transfer jeopardize the recovery of the endangered whooping crane, a species to which this country and others are legally bound to preserve, it sets a precedent which threatens the very integrity of the entire Refuge System. By failing to recognize that Matagorda's wetlands, uplands, tidal flats, and other habitats are indispensable components of a unified ecosystem which encompasses Aransas National Wildlife Refuge and the shallow bays in between -- and upon which countless forms of wildlife, including the whooping cranes, depend -- the agreement inadequately addresses the unique environmental

concerns of the Matagorda area. Finally, joint administration of Wildlife Refuges has in the past proven to be inoperative because of conflicting missions between various agencies, state or federal, and has consistently been rejected by this committee and Congress. It should be rejected here.

I. The National Wildlife Refuge System and its Matagorda Unit are of National and International Environmental Significance

In its efforts to improve refuge administration, Congress in 1966 established the National Wildlife Refuge System for "the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife . . .." Further, Congress stated that the system was to be "administered by the Secretary through the United States Fish and Wildlife Service." 16 U.S.C. §668(a). In other words, a truly national system was envisioned.

The origins of wildlife conservation can be traced to the turn of the century, 1903, when Theodore Roosevelt created the Pelican Island National Wildlife Refuge off the coast of Florida. For the next 80 years, however, Congress took primary responsibility for building a nationally oriented refuge system and for achieving the broad wildlife policies a national system embodies. Historically, this subcommittee has played a vital role in formulating the policy of protective management of wildlife, including the recognition that the Refuge System — our only federal land management system devoted primarily to wildlife conservation — represents an immense national wealth of irreplaceable scenic, recreational, environmental and

scientific value. Implicit in the concept of public resource management, and explicit in legislative directives, are the principles that wildlife preservation is of the utmost national importance, and that the federal government is uniquely suited to be the public agent with direct responsibility for the stewardship of our wildlife resources.

The primacy of the federal government in wildlife refuge management was firmly established in Missouri v. Holland, 252 U.S. 416 (1920), where the Supreme Court unequivically held that the protection of wildlife (in this instance, migratory waterfowl) was "a national interest of very nearly the first magnitude [which could] be protected only by national action. . ." and that it was "not sufficient to rely upon the States" in order to achieve national environmental objectives. Id. at 435. Similarly, because whooping cranes and other migratory birds found in Matagorda are subject to international treaties, any delegation of federal wildlife conservation obligations with respect to Matagorda runs counter to the spirit and intent of the environmental laws, and, effectively, eviscerates a portion of the government's unique and ultimate responsibility for wildlife preservation.

Mr. Chairman, Congressional ratification of this transfer would give Secretary James Watt a seal of approval for an action in which he deliberately abandons his mandatory duties. Unless and until the Secretary of Interior makes a specific determination that the refuge lands are no longer needed for the purposes for which the refuge was established — i.e. the preservation of the whooping cranes, migratory waterfowl, and other wildlife — the relinquishment of federal management is unsupportable. Any other

interpretation of environmental policy and laws would allow the Secretary to dispose of refuge lands at will. This would be disastrous.

II. Matagorda Island is of Critical Importance to the Endangered Whooping Crane and Other Protected Species of Wildlife

Matagorda Island and the surrounding area constitute an inseverable estuarine ecosystem that supports over 80% of the worlds non-captive whooping cranes. Implicit in the concept of an ecosystem is the recognition that no portion of the biological system can be disturbed without affecting the entire environment. Any division of management authority of this critical habitat seriously threatens the continued recovery of the endangered whooping crane. Especially now, in this critical phase of the whooping crane recovery, sound environmental policy requires unified management authority, not the ineffective piecemeal administration which the Refuge System was created to replace.

The significance of Matagorda Island to the whooping crane recovery efforts can not be overstated. Whoopers move between Aransas National Wildlife Refuge on the mainland and Matagorda Island, across the intercoastal waterway, and are increasingly inhabiting the uplands portion of Matagorda, which are federally owned. Scientists agree that these uplands are important both as buffer zones to established wintering grounds and, in the future, as a new habitat for the expanding whooper population. The following observations are illustrative:

- Dr. Scott Derrickson, Fish and Wildlife research behaviorist, in 1981 asserted that "what concerns me most is that as the Aransas whooper population has increased, we see the birds

pioneering into new areas both in and outside the refuge. I expect to see this in future years. Matagorda is there and available. We should protect it." Movements by the cranes in recent years (Maps, Attachment I) confirm Dr. Derrickson's observation.

- Dr. David Blankinship, biologist and manager of the Robert Porter Allen Audubon Sanctuary, which includes five thousand acres of Matagorda Island, said: "The use of the upland certainly will have a big bearing on use of the marshes by whoopers. Hunting or development would render the area much less suitable."

- Citing the need for a buffer between the adjoining wetlands, the Fish and Wildlife Service several years ago noted that "it is necessary to protect these wintering territories by upland buffer areas or they will be abandoned by the cranes."

- Frank Johnson, manager of Aransas National Wildlife Refuge, noted in George Laycock's book The Sign of the Flying Goose (1965): "The most important thing of all is to provide the (whoopers) with isolation."

- In 1975, the Fish and Wildlife Service described the whooper's dependence on the habitat provided by Matagorda Island and the only other undeveloped island, St. Joseph, directly south of Matagorda: "With the requirement of 400 to 650 acres per territory, the habitat associated with St. Joseph and Matagorda Island is the only available area on the Texas coast free enough from human intrusion to provide for futher expansions of the flock,". (St. Joseph, of course, is privately owned and its management is not integrated with the Refuge System.)

  In fact, the fall of 1982 saw the first documented use of Matagorda uplands by five wintering whooping cranes. It is likely this habitat pattern will continue.

Clearly, the effective management of Matagorda Island is critical to the continued recovery of the whooping crane, and the United States has so found. The 1971 "Memorandum of Understanding" between the Air Force and Interior specifically stated that the inclusion of Matagorda in the National Wildlife Refuge System was necessary for Interior to "meet it's responsibilities for the Whooping Crane [under the Endangered species Preservation Act of 1966]." Neither the purposes of the Refuge System nor the significance of Matagorda

Island to the whooping crane recovery has changed. Accordingly, the Secretary's obligations remain the same. Matagorda must remain a part of the Refuge System.

It would be a mistake, however, to narrow this discussion to the whooping crane alone. The Interior Department has long-standing and exclusive responsibility for protecting all migratory birds and their habitat. Moreover, the Fish and Wildlife Service has long recognized the importance of the Texas Gulf Coast generally and Matagorda Island in particular in its formulation of a national migratory bird program.

As part of Aransas National Wildlife Refuge, Matagorda is an internationally important area which is uniquely suited to benefit thousands of terns, gulls, shorebirds, white pelicans and other migratory waterfowl. Its tidal marshes, freshwater ponds, ocean beaches, and uplands are of particular importance to the protection and enhancement of numerous endangered species other than the whooping crane, including the peregrin falcon, brown pelican, osprey, and Kemp's Ridley sea turtle. The protection of these species represents a national commitment, as shown below.

The federal portion of Matagorda, as a unit of the Aransas National Wildlife Refuge, comes under the general authority of the Migratory Bird Conservation Act, 16 U.S.C. §715, and is to be:

> "administered by the Secretary of the Interior under rules and regulations prescribed by him to conserve and protect migratory birds in accordance with treaty obligations with Mexico and Canada. . ."

Further, the Refuge Administration Act places the responsibility of administering "areas for the conservation of fish and wildlife, including species that are threatened with extinction" upon the Secretary of Interior, acting through the Fish and Wildlife Service. 16 U.S.C. §668dd(a)(1). Finally, in the Endangered Species Act of 1973, 16 U.S.C. §1531(c), Congress reaffirmed the primary responsibility of the federal government for the protection of endangered species. In sum, Matagorda Island and the surrounding area is a singularly significant natural resource, the management of which implicates national and international environmental concerns, and, accordingly, requires nationally oriented management.

III. Joint Administration of Conservation Lands Does Not Work and Past Attempts to Divide Jurisdiction Over the Refuge System Have Been Rejected

It has long been recognized that joint jurisdiction and joint management of national wildlife refuges hinders effective resource management and undermines the integrity and coherence of the entire Refuge System. With respect to joint management efforts a 1969 report by the Special Advisory Board on Wildlife Management, chaired by A. Starker Leopold, noted that:

> One weakness characteristic of some individual refuges is the lack of full jurisdiction on the part of the Bureau of Sport Fisheries and Wildlife. Split administrative authority with other federal agencies is an unsatisfactory arrangement . . .. No refuge in split jurisdiction encountered by this Board was really properly managed. Every unit of the National Wildlife Refuge System should, if possible be incorporated fully into the jurisdiction of the Bureau.

In an undated report, "A Proposal for Single Agency Management," the Fish and Wildlife Service described the inherent deficiencies of joint jurisdiction over conservation lands by agencies with common goals, but divergent management philosophies, and concluded that: "As a result of these irresolveable differences, the public, in whose name these areas are managed, have not received full benefit of the natural resources found there, nor have these resources been adequately protected."

Prior administrations have attempted to disrupt the Refuge System by disposing of certain refuge lands, but Congress has consistently upheld the integrity of the system:

- In the 1950's, the Eisenhower Administration attempted to dispose of a number of wildlife refuges, declaring them to be surplus. At the time, Congress considered forbidding secretarial disposal of wildlife refuge lands without prior congressional approval, but shelved the idea when assurances were given that the give-away would be dropped.

- In 1970, the Nixon Administration tried to sell 10% of our wildlife refuge lands. This committee played an important role in preventing that action as well.

- During 1975-76, Secretary of the Interior, Rogers Morton, proposed another plan for dismantling the Refuge System; transferring the management of three "wildlife ranges" — the Kofa (Arizona), the Charles Sheldon (Nevada), and the Charles M. Russell (Montana) — to the Bureau of Land Management, but keeping them as part of the National Wildlife Refuge System. Again, this committee and Congress upheld the National Refuge System, as shown below.

After two decades of controversy, the issue of unified management of refuge lands was resolved when this committee prevented Secretary Morton's proposed transfer of management authority. By favorably reporting HR 5512, commonly known as the Game Range Act (P.L. 94-223), this committee squarely

addressed the issues we face today. The Game Range Act found that: 1) all units of the Refuge System play a vital role toward protection and enhancement of the Nation's indigenous wildlife and natural habitat diversity; and 2) refuges managed under joint jurisdiction do not properly fulfill the mission of the Refuge System. Following the impetus of this committee, Congress amended the National Wildlife Refuge Administration Act to consolidate all refuge lands under the jurisdiction of the Fish and Wildlife Service. Congressional observations made then are equally pertinent today.

The Senate Report on the Game Range Act stated that:

> In contrast to BLM [Bureau of Land Management], the U.S. Fish and Wildlife Service has as its basic mission, the protection and enhancement of wildlife. The agency's entire resources are directed toward this goal.
>
> Thus, it would appear that the goals of the National Wildlife Refuge System will best be served by assuring that the U.S. Fish and Wildlife Service has responsibility for management in all areas of the refuge system. (Emphasis supplied.)

Senator Moss summarized the underlying policy which the Game Range Act embodied:

> Mr. President, the purpose of this bill is to insure the integrity of the National Wildlife Refuge System by preventing the arbitrary transfer and disposal of refuges and by providing that the refuge system will be administered by the Secretary of the Interior through the U.S. Fish and Wildlife Service.

Further, Congressman Dingell stated:

> The U.S. Fish and Wildlife Service is our only Federal agency which has the primary mission of protecting wildlife habitat and managing it for the benefit of wildlife. . .

> If we let this proposed pattern of administrative nonresponsibility go unchallenged, no unit of the National Wildlife Refuge System or National Park System is safe from administrative transfer to another for 'management.' If this proposed transfer is left unchallenged, the intent and will of the Congress thus will be subverted or ignored. (Emphasis supplied.)

The dispute over Matagorda Island presents a similar but even more egregious attempt to undermine the purposes of the Refuge System. Under the guise of "joint jurisdiction," the exchange of easements for a period of 100 years is actually a total divesture of federal management responsibilities, and should be recognized as such.

Section 3 of the Agreement states that:

> "TPWD shall adopt the management principles, goals and objectives set forth in the NWRS Manual in managing all publicly-owned lands on Matagorda Island. Where this Agreement is inconsistant with NWRS Manual, this agreement shall govern." (Emphasis supplied)

In other words, the agreement overrides federal environmental protection methods set forth in the Fish and Wildlife Manual. This is unacceptable.

The State of Texas operates under a completely different management philosophy and mandate than that of the Fish and Wildlife Service. The Memorandum of Agreement allocates authority to the Texas Parks Wildlife Department to administer "all publicly-owned land on Matagorda Island," to be called Matagorda Island State Park and Wildlife Management Area. Essentially, and effectively, Matagorda Island will no longer be part of

the Refuge System. It will become a Texas State Park, subject to various state regulations. Most disturbingly, the State of Texas was required by state law to administer the newly created State Park on Matagorda, until April of this year, "primarily . . . . for public recreational purposes." ___Texas Code §§22.201 and 22.202. Recent Texas State legislation has modified the Code and has made recreation a co-purpose with wildlife. In contrast, the National Wildlife Refuge System Act mandates the supremacy of wildlife conservation over recreational uses on refuge lands. It is just this type of state-federal conflict in wildlife conservation goals that makes joint administration infeasible.

Additionally, the transfer agreement provides that Texas will manage all federal/state lands on Matagorda in accordance with a State conceptional plan, a plan which also subordinates wildlife conservation goals to recreational development. The Texas conceptual plan, published with the final EIS in October, 1982, highlights the flaws in the Agreement. Upon reviewing the State's documents, we have concluded that the plan:

- Places an inappropriate emphasis on recreational development, including a minimum of 23 separate components of facility development and construction.
- Fails to provide for whooping crane recovery on the uplands; inaccurately assuming that crane recovery will take place only on the wetlands.
- Proposes habitat conversion of uplands which will likely compromise whooper recovery and migratory waterfowl management.
- Calls for multiple use management, at the expense of natural diversity of habitat.

The Matagorda situation is proceeding in exactly the same direction as the 1976 game range transfer proposal and other improvidently designed plans. It should be rejected on the same grounds.

Now is time to place the Matagorda Agreement where it belongs — in the same category of politically expedient give-aways that have pestered the Refuge System for years. There was no sound basis for approving past joint management arrangements, and there is no basis now.

IV. The Transfer of NWR Management Authority of the Federal Portion of Matagorda Island is Neither an Isolated Nor a Unique Situation

As discussed above, systematic attempts by previous administrations to transfer management responsibilities over refuge lands to State and Federal agencies other than the Fish and Wildlife Service have rightfully been rejected. This administration, through the facade of cooperative agreements, has created a new and insidious method of dismantling the Refuge system. Our concern centers in large part on this Administration's attempts to accomplish indirectly, by cooperative agreements, what they could not accomplish directly, i.e., relinquishing responsibility for administration and management of refuge lands, without a determination that the lands are no longer suitable for refuge purposes. Unfortunately, the Matagorda arrangement is not an isolated event. Already, other Refuge System lands are in jeopardy.

- At Back Bay National Wildlife Refuge a similar arrangement is being proposed by the Administration with the State of Virginia. Here again, through transfer of easements or other property interests, the Secretary intends to transfer manage-

ment authority to Virginia's Park Department to control access through the Refuge, opening the way for major intrusions and degradation of the wildlife habitat.

- o While the Fish and Wildlife Service has temporarily rejected the plan, the Service has been considering transfer of management authority of the Flint Hills National Wildlife Refuge to the State of Kansas resulting from a request by Kansas Fish and Game. (Attachment II)

- o In the Bering Sea, the Interior Department has reached a tentative agreement with three Native corporations to exchange federal lands on St. Matthew Island for Native Land on the mainland. The proposed exchange land on St. Matthew Island is not only a unit of the National Wildlife Refuge System, but is also designated wilderness. The land would be developed as a support facility for drilling operations on the Outer Continental Shelf under this plan.

It is time to halt the erosion of longstanding environmental commitments. If the policies or circumstances that prompted a national approach to environmental concerns are no longer viable, then Congress should amend the laws accordingly. If, however, we are to remain committed to the environmental goals developed since Theodore Roosevelt created the first refuge in 1903, we must avoid the temptation of elevating short-term compromises above long-term environmental objectives.

V. Recommendations

Mr. Chairman, in order to protect the integrity of the National Wildlife Refuge System and enhance the chances of recovery of the whooping crane, we propose a two part strategy for the future of Matagorda Island:

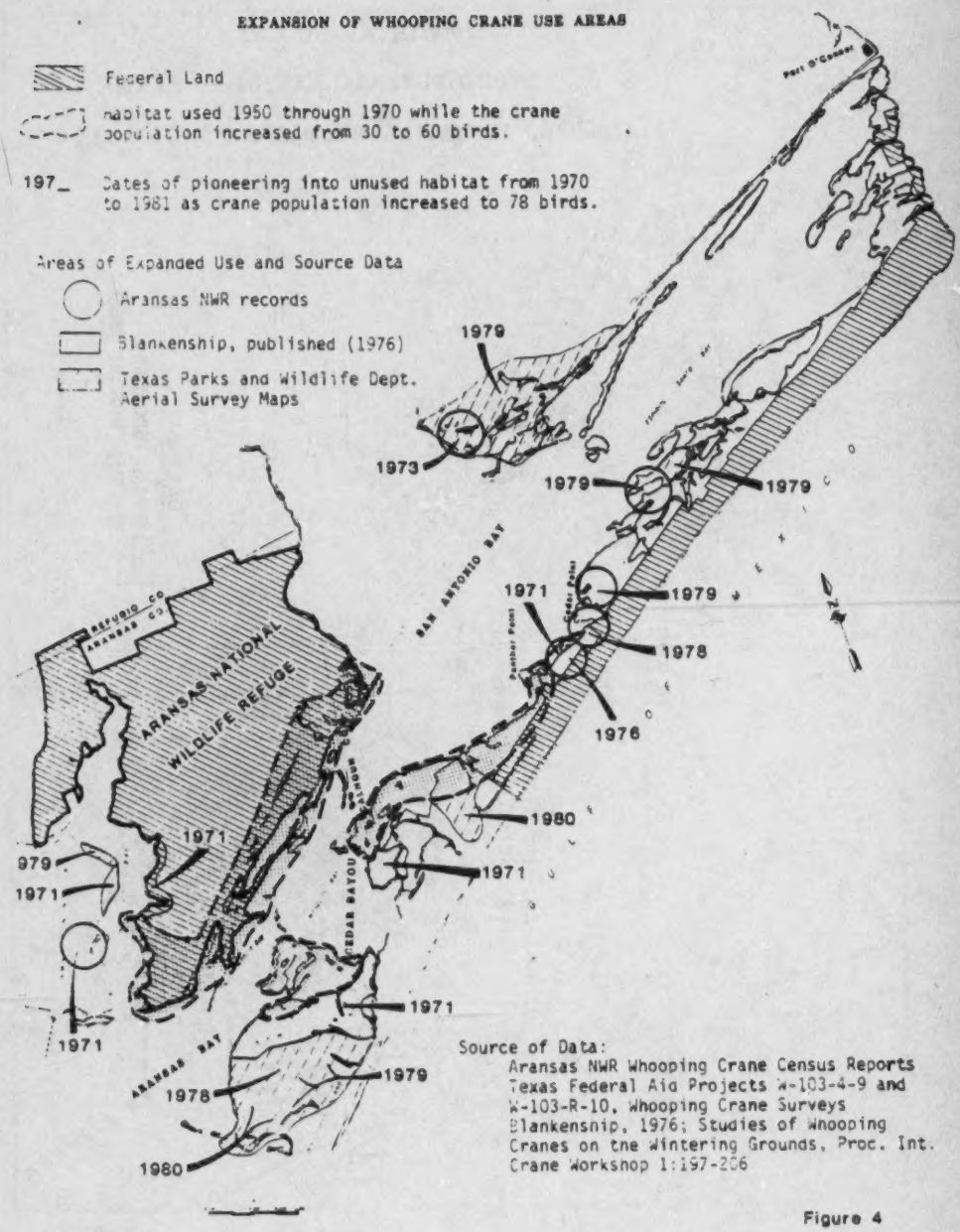
1. Congress should reaffirm the status of the Matagorda Unit of the Aransas National Wildlife Refuge as an integral part of the National Wildlife Refuge System which must be managed solely by the United States Fish and Wildlife Service; and

2. Congress should authorize the Secretary of the Interior to enter into an agreement with the State of Texas allowing federal management of non-federal lands so as to benefit the whooping crane.

Furthermore, in the interest of the National Wildlife Refuge System, this committee should hold hearings on S.1232, a bill introduced by Senator Hart, that is intended to eliminate the abuse of Secretarial discretion with respect to National Wildlife Refuges. This bill which is co-sponsored by Senators Tsongas, Cranston, Roth and Baucus not only proposes to clarify the responsibilities of the Secretary of Interior, but would also strengthen the Refuge System, the mainstay of our nation's wildlife heritage, by preventing Secretarial disposal of any Refuge Lands found in the National Wilderness Preservation System, the National Wild and Scenic Rivers System or the National Trails System.

Mr. Chairman, thank you for this opportunity to present our views.

ATTACHMENT I



Source of Data:
Aransas NWR Whooping Crane Census Reports
Texas Federal Aid Projects W-103-4-9 and W-103-R-10, Whooping Crane Surveys
Blankenship, 1976; Studies of Whooping Cranes on the Wintering Grounds, Proc. Int. Crane Workshop 1:197-206

Figure 4

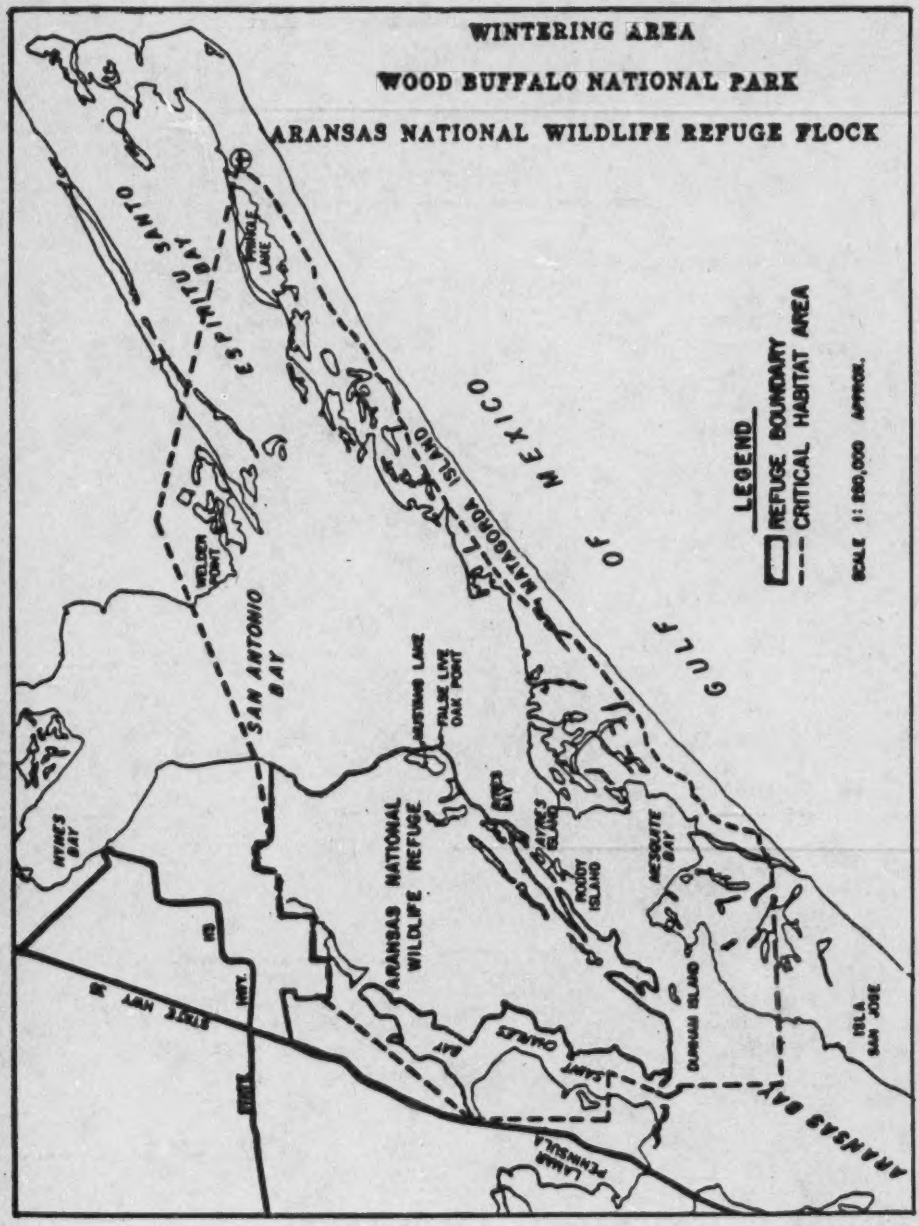

WINTERING AREA
WOOD BUFFALO NATIONAL PARK
ARANSAS NATIONAL WILDLIFE REFUGE FLOCK
LEGEND
REFUGE BOUNDARY
CRITICAL HABITAT AREA
SCALE 1: 250,000 APPROX.
GULF OF MEXICO
MATAGORDA ISLAND
ESPIRITU SANTO BAY
SAN ANTONIO BAY
ARANSAS NATIONAL WILDLIFE REFUGE
AYNE'S BAY
MESQUITE BAY
DUNHAM ISLAND
ISLA SAN JOSE
ARANSAS BAY
LAVACA PENINSULA
STATE HWY 35
HWY.

FIGURE 3

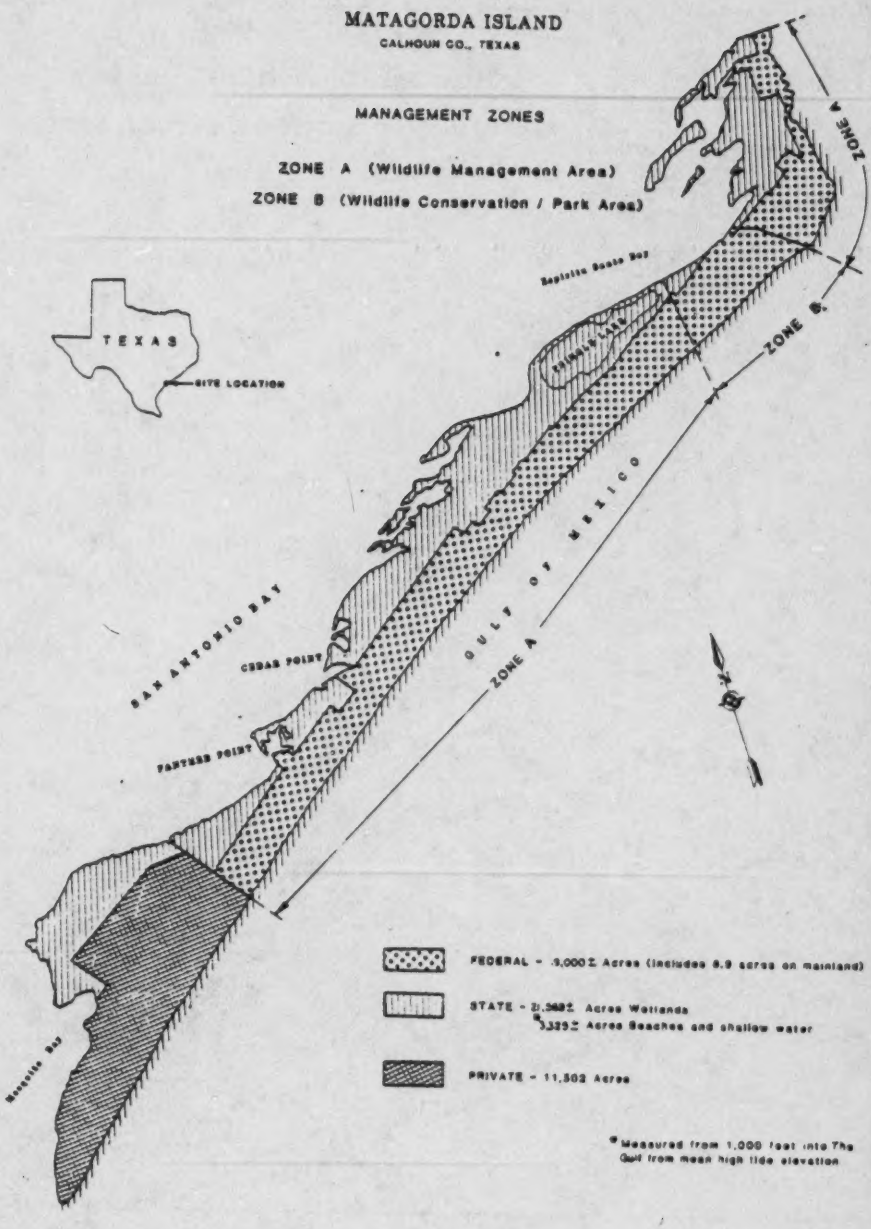

MATAGORDA ISLAND
CALHOUN CO., TEXAS
MANAGEMENT ZONES
ZONE A (Wildlife Management Area)
ZONE B (Wildlife Conservation / Park Area)
TEXAS
SITE LOCATION
ZONE A
ZONE B
GULF OF MEXICO
SAN ANTONIO BAY
CEDAR POINT
PANTHER POINT
Espiritu Santo Bay
Matagorda Bay
FEDERAL - 9,000± Acres (Includes 8.9 acres on mainland)
STATE - 2,582± Acres Wetlands
3,329± Acres Beaches and shallow water
PRIVATE - 11,502 Acres
* Measured from 1,000 feet into The Gulf from mean high tide elevation

Figure 1

ATTACHMENT II

United States Department of the Interior
FISH AND WILDLIFE SERVICE

MAILING ADDRESS:
Post Office Box 25486
Denver Federal Center
Denver, Colorado 80225

STREET LOCATION:
134 Union Blvd.
Lakewood, Colorado 80228

IN REPLY REFER TO:

WR:830.1

JAN 5 1982

Mrs. Dorothy R. Laird, Secretary
Kanza Audubon Society
1216 Sunnyslope St.
Emporia, KA 66801

Dear Mrs. Laird:

This is in response to your letter of November 27, 1982, in which you inquired about the future of Flint Hills National Wildlife Refuge. The Fish and Wildlife Service has no plans for closing Flint Hills NWR.

As you are probably aware, in normal years when serious flooding does not occur, the refuge produces excellent wildlife benefits and new headquarters facilities were completed recently. However, we continually are seeking ways to reduce our operating costs, particularly in times of budgetary constraints such as the present. The Kansas Fish and Game Department has expressed interest in assuming the management responsibilities at Flint Hills NWR, and we have looked into this possibility. Under that proposal, the area would continue to be managed for wildlife--it simply would be managed by a State wildlife agency rather than by a Federal counterpart. No decision to transfer management responsibility to the State has been made, and Flint Hills Refuge is continuing to be managed as a unit within the National Wildlife Refuge System.

We appreciate your concern about our wildlife resources and Flint Hills Refuge. If you have any other questions, please do not hesitate to contact me.

Sincerely,

Marvin L Plenert

(Acting)
Assistant Regional Director
Wildlife Resources

cc: Refuge Manager, Flint Hills NWR

Defenders
OF WILDLIFE

May 17, 1983

The Honorable John H. Chafee
United States Senate
Committee on Environment and Public Works
Washington, D. C. 20510

Dear Senator Chafee:

Thank you for your invitation of May 12th to testify before your subcommittee on May 19th regarding S-696 and H.R. 1935, bills to ratify an exchange agreement concerning National Wildlife Refuge Lands located on Matagorda Island in Texas. Unfortunately, I will be unable to personally appear before the subcommittee on that day. Mr. Stephen J. Parcells of my staff is also personnally knowledgable, and directly acquainted with the resource itself as well, and will be testifying in my place on behalf of Defenders of Wildlife. I wish to have my testimony as delivered to your offices today, entered into the record, and also offer a summary of some of our concerns in this letter for entry into the record as well.

Defenders of Wildlife opposes the passage of S-696, a bill to ratify the exchange agreement concerning National Wildlife Refuge System Lands located on Matagorda Island in Texas. First, we believe that the Secretary of the Interior exceeded his legal authority by entering into such an agreement with the State of Texas, and that the Refuge Administration Act provides that the Secretary of Interior and only the Secretary of Interior may directly administer National Wildlife Refuge System Lands. This principal was upheld in Trustees for Alaska vs. Watt. Second, the record of problems involving joint jurisdiction over refuge lands has been well documented by the Leopold Report, and testimony provided during the 1975 Game Range Act Amendments to the National Wildlife Refuge Administration Act. It does not suit the goals of building and maintaining the overall integrity of a National Wildlife Refuge System to pursue such agreements as the delegation of day to day management authority for Matagorda Island to the State of Texas by Fish and Wildlife Service. Third, the goals set forth by the State of Texas for managing Matagorda Island, not only appear to be inconsistent with the Refuge Administration Act and Migratory Bird Act, but do not appear to be consistent with the goals for whooping crane recovery either. Dr. George Archibold of the International Crane Foundation has pointed out that Matagorda Island has three times as much potential whooping crane habitat as does Aransas National Wildlife Refuge on the mainland of Black Jack Pennisula. Development of Matagorda Island along directions proposed by the State of Texas could impede the expansion of the whooping crane population into the Matagorda Island habitat and therefore frustrate whooping crane recovery, which is seeking to achieve a level of 200 birds,

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as set forth in the recovery plan goals. Fourth, delegation of day to day management by Fish & Wildlife Service to the State of Texas is not an integrated management strategy. It is our understanding that the Fish and Wildlife Service management of the federal lands on Matagorda will be replaced by management through four (4) Texas state agencies. Fifth, the proposed management plans for the uplands portions of Matagorda Island by the State of Texas appear to alter the existing waterfowl habitat in favor of quail and turkey, which would appear to be contrary to the purposes for which the refuge was set up under the Migratory Bird Act. Sixth, the economics of this do not favor the U.S. Treasury either. It is our understanding that there will be no saving in the federal budget through this delegation of management to the State of Texas, since it is reported that the State of Texas will be applying for Pittman-Robinson Funds to cover the costs of managing Matagorda Island.

Senator, Matagorda Island Unit of Aransas National Wildlife Refuge is, by treaty, of international treaty significance for not only the endangered whooping crane, but for migratory waterfowl, and as such has a value which should be managed and administered directly on a day to day basis by the Fish and Wildlife Service. Matagorda Island Unit of Aransas National Wildlife Refuge should remain managed directly by the Fish and Wildlife Service, and alternatives should be sought to incorporate the management of the state school lands on Matagorda Island into the National Wildlife Refuge System management by lease or memorandum of agreement, since Texas has indicated the willingness to have those lands managed in a refuge-like manner.

Thank you for the opportunity to express our views on the future of Matagorda Island and the endangered whooping crane.

Sincerely,

Allen E. Smith
President

AES:dcc

National Audubon Society

NATIONAL CAPITAL OFFICE
645 PENNSYLVANIA AVENUE, S.E., WASHINGTON, D.C. 20003 (202) 547-9009

TESTIMONY OF AMOS S. ENO

DIRECTOR, WILDLIFE PROGRAMS

NATIONAL AUDUBON SOCIETY

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

MAY 19, 1983

AMERICANS COMMITTED TO CONSERVATION
100% Recycled Paper

On December 8, 1982, the Department of the Interior and the State of Texas entered into an agreement providing for management of Matagorda Island off the Texas coast. In the House, Representatives Patman, Wright, Breaux and Dingell introduced legislation (H.R.1935) to ratify this Agreement which passed the House by unanimous vote on April 19. Senators Bentsen and Tower have introduced the companion legislation which we consider today. Because we believe that the Agreement provides essential protection to the valuable wildlife and other natural resources on Matagorda, we urge the Committee's support for this legislation.

The National Audubon Society has worked for over 70 years to preserve migratory birds and wildlife habitat on the Texas coastline. Our then president, Gilbert Pearson, first visited the Texas coast on behalf of the Audubon Society in 1918 and again in 1920. During his visits to South Bird Island in northern Laguna Madre, he confirmed the presence of both reddish egrets and nine separate flocks of roseate spoonbills. Both of these species had been nearly extirpated from their remaining U.S. range so their discovery along the Texas coast was cause for action. Pearson immediately began to negotiate with the state to establish sanctuaries on the site of the most important colonies. In 1923, with the approval of the Texas legislature, the state's General Land Office gave the Audubon Society a 50-year lease on 3,871 acres of islands in Laguna Madre. Audubon supplied wardens to protect and patrol these important bird colonies. These islands remain in our sanctuary system to this day, and since this early commitment sixty (60) days ago, Audubon has continued to make the protection of endangered species along the Texas coast a priority for action.

In 1948, Audubon's then research scientist, the late Robert Porter Allen, began his pioneering studies of the whooping crane on their wintering grounds on the Texas coast. For the past 20 years, the Society has focused its energies on ensuring the protection of Matagorda Island, because it is the winter home of the whooping crane and it is frequented by seven other endangered species. We maintain a 4,000-acre sanctuary on Matagorda Island and this year we added four more islands utilized by whooping cranes in adjacent bays to our sanctuary system. Through our sanctuary staff we provide year-round patrol of Matagorda's shores and bayside wetlands. David Blankinship, Audubon's staff whooping crane research biologist, is a member of the whooping crane recovery team and a year-round resident of this area. Dave just returned from a successful trip tracking a northbound family of whooping cranes by radio telemetry from their wintering ground at Aransas to their summer breeding grounds at Wood Buffalo National Park in Canada. Audubon pioneered this radio-tracking capability and we continue to participate in this important aspect of the whooping crane recovery program. Today the National Audubon Society maintains in its sanctuary system a total of over 10,000 acres on 16 islands distributed along Texas's gulf coast.

Despite our intimate past and present involvement with Matagorda, Audubon is being publicly criticized by certain other environmental groups for our support of the recent Department of the Interior/Texas Agreement for management of Matagorda which brings all public lands on the island under the protection of the U.S. Fish and Wildlife Service. Some have accused Audubon of "selling out" to Secretary Watt.

None of the groups opposing the Matagorda Agreement has matched Audubon's investment in the island, our continuing work there or our research program on behalf of the whooping crane. More importantly, as we hope our testimony demonstrates, the Matagorda Agreement is a singular victory for environmental interests. After 11 years of unsuccessful negotiations by Republican and Democratic administrations, the Agreement has finally brought all the public lands on Matagorda under the legal protection of the National Wildlife Refuge System. It has been reviewed and judged acceptable by Audubon, the National Wildlife Federation, and several other national and local groups, and by the House of Representatives

The chief aim of the National Audubon Society, which we feel we achieved, was to protect the resources of Matagorda in perpetuity. Our position was crafted painstakingly after numerous negotiating sessions with the Federal and state governments. Subsequently, it has been reviewed scrupulously by Audubon's board and the board's special committee on Matagorda, which includes former Secretary of the Interior Cecil Andrus and former Assistant Secretary Nathaniel P. Reed, members of past Democratic and Republican administrations respectively.

In broad terms, the Agreement provides as follows: (1) the Federal property (19,000 acres) is now, for the first time, in fee title a part of the National Wildlife Refuge System; (2) the state-owned wetlands and beach frontage are brought into the National Wildlife Refuge System by means of an easement; (3) the Texas Park and Wildlife Department manages the entire public land entity, but pursuant to the Fish and Wildlife Service's National Wildlife

Refuge Manual and the Federal Code as it applies to the National Wildlife Refuge System; (4) the Fish and Wildlife Service retains authority to review and approve all management plans and to issue all permits pertaining to land use and access to the island; and (5) the State of Texas for the first time makes a major commitment to the protection and management of lands for the benefit of endangered and nongame wildlife species. Finally, not to be overlooked is the fact that a longstanding Federal/state controversy has been amicably resolved.

As even this broad sketch suggests, the Matagorda Agreement is a complicated one, perhaps uniquely so. This is because for the last 12 years state ownership of part of Matagorda has stubbornly prevented the implementation of most conservationists' avowed aim, Federal ownership and management of the entire island. Although approximately 19,000 acres of Matagorda have been included since 1971 in the Aransas National Wildlife Refuge through a cooperative agreement between the Fish and Wildlife Service and the Air Force, the Federal portion of the island does not contain the most important wildlife habitat. That habitat is part of the approximately 24,000 acres of land owned by Texas' General Land Office (GLO). The GLO land contains both the bayside wetlands which are critically important for the whooping crane and the alligator, and the beach frontage which is important for migrating peregrines and nesting sea turtles and the brown pelican.

Many of us at Audubon have spent considerable time during the past 10 years trying to bring Federal protection to the state-owned lands on Matagorda. Until this Agreement we had failed, even during the Andrus tenure

at Interior when a Democrat was Governor of Texas (Briscoe). When Bob Armstrong, one of the best conservationists in Texas, announced that he would retire from the General Land Office, we decided to act quickly to take advantage of his assistance. We are presently seeking legislation to ratify this Agreement, and urge your assistance to ensure that, from the standpoint of Interior policy, Matagorda is treated as an unique situation which will not serve as a precedent for future transfers of land or management to state agencies where the unique set of circumstances surrounding the Matagorda situation and the tightly-drawn Agreement present here are absent. As Congressman Breaux stated when introducing this legislation, there are three critical factors to consider: "First, and foremost, this agreement brings all of the Federal and State lands under national wildlife refuge status . . . Second, this agreement brings to a successful conclusion a longstanding dispute . . . which has prevented any active management of the area by either the Federal or the State government . . . and Finally, this agreement if ratified (by S. 696) would do no harm to the concepts that govern our refuge system. Our legislation treats this agreement for what it is - a unique exchange agreement."

The Agreement

As you know, the National Audubon Society and virtually all other environmental groups initially opposed Interior's original proposal to turn over the Federal lands on Matagorda Island to the state. We also opposed the unilateral provision of state management on Federal lands. Our posture forced all parties to the negotiating table and during the drawn-out negotiations, we

became convinced that an exchange of management for a Federal interest in the state lands could work and be consistent with protecting the National Wildlife Refuge System, providing that: (1) Texas manages the land as though it were part of the National Wildlife Refuge System (by, among other things, keeping the land in the National Wildlife Refuge System and by requiring Texas to adopt the Federal National Wildlife Refuge System Refuge Manual); (2) the Fish and Wildlife Service retains the authority to issue all major use permits; (3) Texas submits annual operating plans for the Fish and Wildlife Service's approval; and (4) environmental groups have the ability to challenge management decisions which, if not satisfactorily resolved administratively, can be reviewed in court by citizen suits.

It is Audubon's view that the final Management Agreement meets each of the concerns elaborated above. In virtually every case, Texas and Interior agreed to our stipulations. The Agreement provides:

1. The state-owned lands will be included in the Aransas National Wildlife Refuge (Agreement, Para. 4);

2. Texas will adopt the National Wildlife Refuge System Management Manual (Agreement, Para. 3);

3. Texas will not permit the building or use of any causeway, highway, bridge, ferry, public airport or similar mode of transportation which would provide land vehicle or aircraft access to the island (Agreement, Para. 9);

4. Texas will not grant any permits, easements or rights-of-way for pipeline or any other nonwildlife or nonpark uses on the publicly-owned lands on Matagorda Island without the approval of the Fish and Wildlife Service (with the exception of oil and gas

leasing which will continue to be governed by existing law and guidelines which we have found to be satisfactory) (Agreement, Paras. 7 and 8);

5. Texas will not erect or permit the erection of any buildings or structures other than those relating to oil, gas or other minerals pursuant to paragraphs 7 and 8 of the Agreement (Easement, Exhibit B, Para. 3);

6. Texas will not permit the drainage by any means of any wetlands presently occurring or recurring due to natural causes (Easement, Exhibit B, Para. 4);

7. Texas will not conduct or authorize the conduct of any recreational activities which interfere with and are not compatible with the national wildlife refuge (Easement, Exhibit B, Para. 5);

8. Texas will not manipulate the land and water or allow the manipulation of the land and water by others in any way that would diminish its value as wildlife habitat without the Fish and Wildlife Service's approval (Easement, Exhibit B, Para. 1);

9. Environmental groups may file petitions with the Fish and Wildlife Service bringing potential incompatible uses to its attention (Agreement, Para. 19). If the Fish and Wildlife Service does not act on any such petition within 30 days, its decision will be subject to court challenge;

10. Texas will immediately halt all activities which the Fish and Wildlife Service finds incompatible with the refuge. If it does not immediately halt the activity, the Fish and Wildlife Service will reassert management authority sufficient to cure the incompatible activity (Agreement, Para. 18);

11. Texas will specify personnel levels in each annual plan (Agreement, Para. 17); and

12. Texas and the Fish and Wildlife Service will enter into a law enforcement Memorandum of Understanding (Agreement, Para. 16).

Our attorneys and the other environmental lawyers with whom we have consulted support our view that the Agreement succeeds in reaching the goals set forth above. We also believe that Texas cannot operate in "bad faith" without quickly causing a collapse of the compromise and the termination of the Agreement.

It is our view that the Agreement clearly benefits the whooping crane and other endangered species present because it ensures the long-term protection of wildlife habitat on the island. In essence the Agreement provides a "best of both worlds" situation, with all public lands on the island coming under the legal protection of the National Wildlife Refuge System and with the State of Texas providing substantial increases in funds and personnel for the protection and management of wildlife on the island.

Our critics remonstrate that we should have added the state lands as part of Aransas National Wildlife Refuge without providing Texas any management role on the Federal lands. As already stated, this is exactly what three successive Republican and Democratic administrations, not to mention the National Audubon Society, have unsuccessfully tried to accomplish. As a native son, and with due respect to Representatives of Texas here today, I feel compelled to observe that there is nothing more stubborn than a Texan,

nor any task on this earth more difficult than trying to make a Texan do what he doesn't want to do, particularly give up his land. Throughout their history, Texans have accorded a special attachment to their public lands. For well over a decade a succession of Texas governors have adamantly refused to turn the state lands over to the Fish and Wildlife Service for inclusion as part of the National Wildlife Refuge System. The Texas position has been unyielding: they refuse to let the land be included in the National Wildlife Refuge System without at least the quid pro quo of this Agreement. In the past year Audubon spent considerable time and effort contacting various Texas leaders and, regardless of party affiliation, they indicated unanimously that no such arrangement would be possible in the foreseeable future. We further confirmed that newly-elected Governor White is a strong supporter of the Matagorda Agreement and is opposed to the state turnover of lands without the Agreement before us.

During hearings in the House opponents of the legislation asserted that the Federal lands have been "given to the state" and that "Matagorda is no longer a wildlife refuge." I think a quick reading of the Agreement will demonstrate that the 19,000 acres of Federal land remain, in fee title, a part of the National Wildlife Refuge System. And for the first time, the 24,000 acres of state lands are also protected by the National Wildlife Refuge Act and the regulations promulgated under that Act. Ratification of the legislation before us removes any shadow of doubt over the inclusion of the lands in question in the refuge system. As Congressman Dingell stated in the

Congressional Record "the bill sets a clear congressional policy that the Federal refuge lands now in the system shall stay in the system and be subject to the laws applicable thereto regardless of any action by the Interior Department."

Second, opponents assert that the Agreement "erodes protection of the very lands needed for the expansion and restoration of the endangered whooping crane." This assertion ignores the most important feature of the Agreement: it extends Federal protection to the state lands that contain the critical whooping crane wintering grounds. And this benefit is achieved without compromising the protection of Federal lands, for the Agreement contains safeguards to ensure the continued enforcement of Federal law on those lands. To better understand how erroneous our opponent's assertion is, allow me to turn the statement on its head and ask what does the Agreement provide as far as protection of the whooping crane that was not present beforehand? For the first time it provides for the application of all applicable Federal statutes and regulations to the state-owned lands. Second, it provides for increased law enforcement protection. Third, it provides active management of both Federal and state areas for the first time in over a decade.

Finally, opponents allege that the Agreement is contrary to the intent of the Refuge Administration Act because it authorizes state management on a national wildlife refuge. It is and always has been Audubon's position that to resolve conflicts over the legality of the Agreement and to ensure that exchanges are not entered into without adequate public review, the Agreement should not go into effect unless it is specifically authorized by an Act of Congress.

For this reason Audubon also supports Senator Hart's bill, S. 1232, amending the exchange provision of the National Wildlife Refuge Administration Act to require congressional approval of most exchanges.

However, the legislation before you is fully consistent with the provisions of the Hart bill and in order to provide immediate protection to the wildlife resources of Matagorda Island, we strongly recommend that the two bills be considered separately.

In our opinion those groups who have chosen to oppose the Matagorda Agreement in the courts and now in Congress are sacrificing the valuable practical benefits the Agreement affords because they incorrectly believe it sets a bad precedent for future, unrelated actions. We believe, however, that as the House Merchant Marine and Fisheries Committee explicitly stated, the Matagorda situation is unique. And, we believe that as long as each exchange is separately considered by Congress, there is little danger of setting the kind of precedent feared by opponents of the exchange. Where Audubon opposes an exchange, such as the one proposed for St. Matthews Island, Alaska, we will vigorously oppose it both in the courts and the Congress.

In conclusion, to best understand the allegations of opponents, it is appropriate to understand what this Agreement does not do.

It does not lessen the protection afforded the whooping crane. It increases protection by bringing state lands under jurisdiction of the refuge system and all Federal wildlife protection statutes. It also increases the law enforcement presence on the island four or five times over.

It does not represent a give-away of refuge lands. The Agreement enhances the refuge system by bringing into the system 24,000 acres of state lands, which is more acreage than Secretary Watt has added to the system in almost three years. And under the Agreement the Federal lands become fee title a part of the refuge system for the first time.

Finally, the Agreement does not undermine the concept envisioned by the founders of the National Wildlife Refuge System and it is not contrary to the intent of Congress. On the contrary, the Agreement provides today's protectors of the refuge system with standing to sue against incompatible activities and with the passage of this legislation, Congress's imprimatur will be clear and lasting.

No organization in this country has done more to protect the whooping crane than Audubon. As we stated earlier, we not only maintain a 5,000-acre sanctuary on Matagorda and adjacent islands, but we employ a leading scientist there full-time to work on the recovery of the crane. We are the only organization which maintains a year-round presence on the island and we intend to monitor the Agreement closely. We are confident that the requirements of Federal oversight and approval provided in the Agreement combined with the national attention that will be focused upon the island will ensure that Texas's management will be worthy of commendation by us all. If not, the Agreement will end.

The Matagorda Agreement ratified in S.696/H.R.1935 provides the essential protections for the resources we have sought to preserve, without establishing any precedent for degradation of other areas. Legislation will

secure the benefits offered by this Agreement, and ensure that the Agreement is not utilized as a general precedent for any less meritorious future Federal/state land disposition.

LEGISLATION TO EXTEND REFUGE AUTHORIZATIONS

National Audubon supports the legislation (H.R. 1723) to extend the authorization for appropriations for acquisition and development for Great Dismal Swamp, Minnesota Valley National Wildlife Refuges and authorization for acquisition for San Francisco Bay National Wildlife Refuge. For Great Dismal Swamp and Minnesota Valley Refuges, we support the increases provided in the House bill, although we recommend that for the Great Dismal Swamp, monies for development of the refuge should be available until expended.

For Minnesota Valley Refuge, we also recommend that the authorization of acquisition funds be "available until expended" and we support an additional $4.6 million for acquisition of the 1,200 additional acres of private land designated in the Master Plan. Based on the recommendations of the Master Plan, we recommend an expansion of the currently authorized refuge boundary from 9,500 acres to include a total of 12,500 acres incorporating the aforementioned private lands and the future transfer of 1,800 acres of public land. Finally, we recommend the inclusion of a provision to allow the Fish and Wildlife Service to accept the transfer or donation of public lands.

LEGISLATION TO ESTABLISH THE U.S. FISH AND WILDLIFE FOUNDATION

With respect to S. 1271, a bill to create the "United States Fish and Wildlife Foundation," I have a few comments for the Committee's consideration.

I think the Committee should focus its attention on the future role of the nonprofit community. This country is bursting to the seams with conservation foundations and nonprofit organizations. I, of course, represent one of the largest organizations within this community. Given the current vogue for a Federal retrenchment in conservation responsibilities and budgets, I think it is incumbent upon the Committee to consider whether an additional foundation - adding competition to an already crowded field - is worth the enterprise, or whether in the face of Federal retrenchment and budget cuts, this should be considered an opportunity to provide nonprofits with some additional tools for action to compensate and compliment Federal programs.

I personally feel that the best means of compensating the Federal role is to augment the private sector's capabilites to contribute to conservation of wildlife and habitat preservation. I recommend that this bill be used to break the ground and to experiment with new tools to allow the private sector to contribute directly to the Fish and Wildlife Service's mission. This can be done in a manner which reduces controversy, such as we have here today on Matagorda, by providing nonprofits an avenue of action as opposed to vocal confrontation.

I suggest the inclusion of the following three provisions:

1. Provide the foundation with the right to sue in court to enjoin nuisances within refuge boundaries or on non-Federal lands adjacent to a refuge.

2. Provide the foundation with a right of first refusal for properties designated by the Fish and Wildlife Service for acquisition.

3. Provide the foundation with a role to advocate Federal consistency for the National Wildlife Refuges.

Mr. Chairman, Audubon is in the process of implementing a nationwide Adopt-a-Refuge program, where each of over 500 chapters is being asked to adopt a local national wildlife refuge and work cooperatively with the refuge manager. If, for example, the provisions cited above were available for our use, it would vastly expand the supportive role Audubon members could play to protect our National Wildlife Refuge System.

Thank you.

THE WILDERNESS SOCIETY

FOUNDED IN 1935

STATEMENT OF THE WILDERNESS SOCIETY ON S.696, A BILL TO RATIFY AN EXCHANGE AGREEMENT CONCERNING NATIONAL WILDLIFE REFUGE SYSTEM LANDS LOCATED ON MATAGORDA ISLAND IN TEXAS. MAY 19, 1983

The Wilderness Society is a 65,000 member conservation organization dedicated to the preservation and wise management of our nation's public land heritage. We welcome the opportunity to present this statement on S.696, a bill to ratify an exchange agreement concerning Matagorda Island in Texas.

The legislation before the committee ratifies an administrative action by Secretary of Interior James Watt which transferred management responsibility for 19,000 acres of National Wildlife Refuge System lands on Matagorda Island to the State of Texas. This administrative transfer is an illegal abuse of the authority vested in the Secretary of Interior. We are categorically opposed to administrative transfer of lands and interests in lands within the refuge system.

This is not the first time that Congress has addressed the issue of administrative transfer or disposal of refuges. In the 1950's the Eisenhower Administration attempted to dispose of a number of refuges by declaring them surplus. Another attempt was made in the Nixon Administration, when 10% of wildlife refuge lands were proposed for sale. A third attempt came in 1975 when Secretary Rogers Morton tried to transfer the management responsibility for three wildlife ranges to the Bureau of Land Management.

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Each time the administration has tried to transfer or dispose of important refuge lands, the Congress or the American public have intervened. In the eyes of Congress and the public, continued Federal management of National Wildlife Refuges is essential to attaining the wildlife conservation goals that refuges were established to achieve. Spurred by the continual threat of administrative divestiture of refuge lands and the overwhelming public outcry against it, Congress passed the 1976 Amendment to the National Wildlife Refuge System Administration Act.

The 1976 amendment firmly established the primary role of the Federal government in managing refuge lands. All units of the System were recognized as playing a vital role toward protection and enhancement of the Nation's indigenous wildlife and natural habitat diversity. Congress directed the Secretary to administer all refuges through the Fish and Wildlife Service and required an affirmative act of Congress before any refuge lands can be transferred to another agency or disposed of.

We thought the law was clear -- administrative transfer and disposal of refuge lands is prohibited -- but Secretary Watt does not seem to have gotten the message. Early in 1981 several conservation organizations discovered that the Fish and wildlife Service was assembling a "hit list" of refuges to be abolished or turned over to the states. Next, Watt proposed transferring fee title of Matagorda Island to Texas. Finally, following almost unanimous opposition to the outright giveaway, the Secretary transferred management responsibility for Matagorda to Texas, while retaining fee title to the property.

The Wilderness Society firmly believes that Mr. Watt's administrative transfer is a violation of law and the intent of Congress. But if S.696 is enacted into law, we will never know the true extent of the Secretary's

authority to transfer away the refuge system. A court suit filed against the transfer by Defenders of Wildlife and the Sierra Club will be rendered moot, and several larger and more important questions will remain unanswered - What other administrative transfers are potentially in store? What is the proper role of the states in managing National Wildlife Refuge System lands? How well have previous management agreements with states preserved the wildlife values that refuges were established to protect? Are amendments to current law governing administrative transfers necessary to clarify the authority of the Secretary? These are important questions that should be answered before any legislation dealing with refuge transfers is allowed to proceed. They have far greater implications for the long term integrity of the National Wildlife Refuge System than for the integrity of one refuge in Texas. We urge the committee to carefully consider conducting a comprehensive analysis of the important issues the Matagorda legislation raises.

State Management of National Wildlife Refuge System Lands

By transferring management responsibility for Matagorda Island to the State of Texas, S.696 presents an opportunity -- perhaps a need -- to look into the track record of existing state management agreements to determine the most appropriate role for states in managing refuge lands. While we recognize and applaud the important contribution that many state and local governments have made to wildlife conservation, there are cases where the unmatched expertise of the Fish and Wildlife Service should not be abrogated.

Recent correspondence with Forrest Carpenter, President of the National Wildlife Refuge Association has helped to expose several examples where management agreements with states may have failed to adequately protect wildlife resources. Often the failure can be attributed to neglect on the part of the Fish and Wildlife Service to enforce compliance with the terms of

these agreements. The following examples are taken, verbatim from correspondence with Mr. Carpenter:

- Some years ago the Service entered into a cooperative agreement with the State of Washington whereby the state was given management prerogatives on the Little Pend Oreille National Wildlife Refuge. The Service has procrastinated in it's enforcement of the agreement and the refuge is currently identified as the state-administered Little Pend Oreille Habitat Management area, although it legally remains a unit of the National Wildlife Refuge System.

- Some Forty years ago the Service entered into 99 year leases with the States of Minnesota and Wisconsin, which gave the states management prerogatives over thousands of acres of so-called resettlement lands in those states. The lands had been transferred to the Service, following completion of the depression-inspired land resettlement program, for wildlife management purposes. The leases outlined certain management criteria and called for annual status reports. These reports are still being routinely received but no effort is being made to inspect operations in the field or to analyze the reports.

- There are a number of cases nationwide where impoundments constructed by the corps of Engineers have been determined to be of importance in the national migratory bird program and all or portions of these reservoirs and adjacent lands have been made available under cooperative agreement to the Service in furtherance of this objective. In many cases a second cooperative agreement has been entered into with the state which makes these lands available for state management under certain prescribed criteria. Few attempts are being made to review management activities or enforce compliance on these types of areas.

- It has been the custom on many of our national wildlife refuges for the states to manage the public hunting programs, both for migratory and non-migratory species. These are usually handled through cooperative agreements which set forth the responsibilities of each party. Frequently, because of differing philosophies and objectives, misunderstanding or even violations of the terms of the agreement occur which are difficult to reconcile without damage to essential harmonious working relationships. This can lead to concessions which are not in the best interest of the wildlife resource.

These examples illustrate the potential problems that may arise when states take over management of national wildlife refuge lands. Where the Fish and Wildlife Service lands owned by states or local government, however, cooperative agreements can benefit the refuge system. At Mason Neck NWR

(Virginia), for example, a management agreement has benefitted the refuge by bringing 789 acres of land owned by the Northern Virginia Regional Park Authority under management control of the Fish and Wildlife Service. Each proposed management agreement must be judged on it's individual merits and with a full understanding of the past history of similar agreements.

Administrative Transfers of Refuge System Lands and Interests in Lands

The Secretary of the Interior has authority to carry out exchanges of refuge lands under section 4(b)(3) of the National Wildlife System Administration Act of 1966 as amended and section 1302 of the Alaska National Interest Lands Act of 1980. There are many cases where the authority of the Secretary is in question, and yet, proposed transfers are proceeding apace.

On. St. Matthew Island, for example, the Interior Department is in the final stages of negotiating an agreement whereby ARCO would be allowed to construct a support facility for oil exploration and production in the Bering Sea. St. Matthew, part of Alaska Maritime National Wildlife Refuge, is also a component of the National Wilderness Preservation System. Under the agreement, Interior would transfer the lands to native corporations who in turn plan to make them available to ARCO.

A similar proposal involves the transfer of Middleton Island, another unit of Alaska Maritime National Wildlife Refuge to the Chugach natives.

In the lower 48, proposals have been considered to allow construction of a marina and country club in Havasu NWR and to allow construction of a road corridor through Back Bay NWR. Transfer of management responsibility for Flint Hills NWR to the state of Kansas has also been proposed.

These and other refuge transfers have all proceeded with questionable authority and with questionable value to the National Wildlife Refuge System. We urge the committee to conduct a thorough investigation of these transfers,

including analysis of the exchange authority, under which they are proposed and the criteria upon which they are being deemed suitable for transfer.

Senator Gary Hart has recently introduced legislation, S.1232, which is intended to clarify the responsibilities of the Secretary with respect to refuge transfers. Many of the concerns which we have raised here are specifically addressed in S.1232. We enccurage the committee to consider this bill at the earliest possible date and to quickly enact legislation to prevent the erosion of the National Wildlife Refuge System through administrative transfer of refuge lands.

Dave Durenberger news

U.S. Senator for Minnesota

OPENING STATEMENT
of
SENATOR DAVE DURENBERGER
before the
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
HEARING ON H.R. 1723
CONCERNING THE MINNESOTA VALLEY NATIONAL WILDLIFE REFUGE

Mr. Chairman, I want to thank you for the opportunity of this hearing on H.R. 1723, a bill which in part reauthorizes the Minnesota Valley National Wildlife Refuge. We are especially grateful for the Committee action last week which put this bill on the Senate calendar. The House has already passed the bill, and the swift action of Senator Chafee gives us hope that the good friends of the Valley right here in Congress will be successful in making the refuge a reality.

The Minnesota Valley is an important natural resource to the people of my state. It lies within the Twin Cities metropolitan area, where half of all Minnesotans reside. Yet it includes diverse wildlife habitats that support an abundance and variety of bird, mammal and fish species not normally found in a metropolitan area. Refuge status, combining the values of protection and access for this area, is an immensely beneficial public undertaking which will enrich the lives of tens of thousands of Americans over the years.

Although I'm here to praise the bill and to thank the Chairman of this subcommittee for his efforts, I would also respectfully ask that we consider two or three amendments not included in the House language.

The refuge has been authorized for a number of years, but we have not had much success in getting appropriations for acquisition and development. Because of the uncertain schedule for future appropriations, I would ask that the authorization for both land acquisition and development be made permanent and that the funds authorized remain available until appropriated.

Second is the matter of boundaries. The original refuge authorization contemplated a land area of approximately 9,500 acres, although the Secretary of the Interior was given the power to add acreage if that would further the purposes of the refuge. Since the original authorization, a master plan for the Minnesota Valley Refuge has been completed and approved by the Secretary. This plan suggests a total land area of approximately 12,400 acres. Considering the policies of this Secretary, I think it would be in the best interest of the Valley if we included the specific boundaries identified by the master plan in the bill we eventually adopt.

-more-

Third, if the land area is increased to 12,400 acres we will need a slightly larger authorization for land acquisition. Not much larger, only slightly larger, because much of the land that would be included under a revised boundary are already held by state or local government.

One final substantive matter, Mr. Chairman. Current policy at the Interior Department requires that the Fish and Wildlife Service minimize the Federal role in management programs like this refuge. This is called the "least interest" policy, I believe. And under this policy Fish and Wildlife is negotiating cooperative agreements with local governments to manage the lands within the refuge where title is held by a local government.

It is my understanding that if the state or a local government wanted to donate the land to the Federal government instead of signing a cooperative agreement, Interior might actually refuge the donation under the "least interest" policy. That's wrong. We're not going to ask for compensation to local governments which want to donate land, but we should require that Interior accept any donation within the boundaries of the refuge, if it is offered.

My final task is a pleasant one. I would like to introduce Elaine Mellott to the Committee. She is a friend of the Valley, being a longtime member and, I believe, an original founder of the citizens' group bearing that name. I have read her testimony, Mr. Chairman. It is an excellent statement of the concerns that have brought scores of Minnesotans into the effort that I am confident will see the Minnesota Valley National Wildlife Refuge to completion.

Thank you, Mr. Chairman.

BACKGROUND SHEET
on the
MINNESOTA VALLEY NATIONAL WILDLIFE REFUGE

Legislation

The refuge originally was authorized by the Minnesota Valley National Wildlife Refuge Act of 1976. The funding authorization expires on Sept. 30, 1983.

The Act authorized $14.5 million for land acquisition and $6 million for development of the recreation area and education/visitor's center, including $500 thousand for a master plan (which was completed in the fall of 1982). Since then, the Federal government has appropriated $6.7 million for land acquisition -- not including $1.6 million appropriated and later rescinded -- and no funding for development. There is no funding in the Administration's FY 1984 budget.

A bill (H.R.1723) to reauthorize the refuge passed the House on April 19, 1983, and was reported by the Senate Environment and Public Works Committee on May 11. The bill is a three-year authorization, increasing the funding levels for inflation: $24.9 million for land acquisition and $9.8 million for the visitor's center.

Environmental groups in Minnesota, such as the Friends of the Minnesota Valley and the Audubon Society, as well as the Minnesota Department of Natural Resources, are urging further changes in the authorization. These could include making the authorization permanent, extending the boundaries of the refuge to include another 3,000 acres of land, and providing for purchase of lands belonging to counties or cities.

The Refuge

The refuge area extends from Fort Snelling State Park in the southern suburbs of Minneapolis, upstream to Carver Rapids near Jordan. This area provides habitat for a large number of migratory waterfowl, fish and other wildlife, presenting the opportunity for an unusual water-based refuge.

The valley's location in a metropolitan area increases its value as an educational and recreational area. The visitor's center, to be located in Bloomington, is expected to attract between 500,000 and 750,000 visitors a year, providing a major boost to the tourism industry in the metro area.

The size of the refuge, as currently authorized, is 9,500 acres. So far some 3,350 acres have been acquired. Funding is presently needed to acquire 2,800 acres of private land and 450 acres of city and county land.

Statement to the U. S. Senate Subcommittee on Environmental Pollution on the Minnesota Valley National Wildlife Refuge
May 19, 1983

Mr. Chairman, Committee Members and Staff:

I am Elaine Mellott from Bloomington, MN., home of the Minnesota Valley Wildlife Refuge. I am representing the Friends of the Minnesota Valley Wildlife Refuge, Recreation Area and State Trail organization. The Friends of the Minnesota Valley Refuge is a two-year old organization with 125 core members. Many of these members have been working on this project for 10-15 years. Their perseverance in itself is an indication of the importance of the Minnesota River Valley as part of our national resources and refuge system. The members of our board represent interested citizens and a coalition of conservation interests numbering tens of thousands of persons in Minnesota alone.

Forming a wildlife buffer between four metropolitan counties and eight suburban communities, the Minnesota Valley National Wildlife Refuge and Recreation Area embodies a new concept in federal, state and local government in natural resource management. The backbone of the Refuge and Recreation Area will be a state trail running adjacent to the Minnesota River between Fort Snelling and Le Sueur. Currently, the trail connects wildlife and recreation lands managed by the U. S. Fish and Widlife Service, Minnesota Department of Natural Resources, and local units of government. There are 17 different units of government involved in this project.

As more people get involved inthe refuge project, excitement builds over the rediscovery of forgotten values that have somehow survived the advance of urbanization.

Behind the natural silt levees that formed on both sides of the Minnesota River channel are 15 marshy lakes fed by springs bubbling from the base of the bluffs. The lakes are surrounded and separated by flood plain forest and farmland. This interspersion of water and diverse habitats accounts for the Valley's surprising abundance of wildlife.

Millions of birds pour through the Minnesota Valley during migration. It provides the best, and in some places the only, suitable corridor of habitat for some species to follow. About 100 species pass through the area each spring on their way to nesting grounds farther north. Another 150 species either nest in the area and head south in the fall, or spend the entire year on the refuge.

Notable migrants include pelicans, whistling swans and bald eagles. Herons, egrets, and wood ducks return to the flood plain forests and marshes each year to nest and raise their young. The most spectacular year-round resident is the pileated woodpecker, whose huge borings are evident on insect-ridden trees throughout the river bottoms.

About 50 different kinds of mammals inhabit the Refuge, including several hundred white-tailed deer. The marshes are peppered with muskrat houses, and beaver cuttings are common along the river's banks. Other species include raccoon, red fox, mink, weasel, squirrel, and rabbit. World marsh and ecology expert Paul Errington, wrote that the Minnesota River Valley marshes are unique in the world in their size, geological characteristics and wildlife productivity.

Future studies will reveal more about the dynamics and significance of the area's wildlife populations and habitats. We know that the refuge lies at the edge of the ranges of species like Bell's vireo and the prickly pear cactus. We know that it provides a staging area for the monarch butterfly migration. But there is so much that remains to be learned and to be taught. Not only about the natural function of ecosystems, but about the historic, present and future interactions of our own species with the land.

Last month, our organization sent to you a series of suggested amendments to P.L. 94-466. I would like to elaborate on the need for these amendments.

We suggest amending Section 4(a) (1) which accommodates the boundary realignment that has been recommended in the approved refuge master

plan and the draft Federal-State Joint Comprehensive Plan. It mainly realigns and consolidates the management responsibilities of Federal, State, and County land managing agencies within the original project. The new refuge boundaries include an important wetland complex that is owned by the county park reserve district but not actively managed for either wildlife or public use at this time. It is believed the USFWS could manage this 1200 acre parcel under a lease or cooperative agreement to be a much more productive wildlife and recreation area. The county no longer wants to be responsible for management of the area because it is inconsistent with the rest of their holdings and their land management priorities. They believe the entire Minneosta Valley project should be the responsibility of the federal and state governments.

Of the four land parcel additions we are requesting, two are natural wetlands and two incorporate orchid fens. These changes require the authorization for land acquisition be increased to $29.5 million which is $4.6 million more than the House recently authorized. The final authorized area for the refuge should be approximately 12,400 acres. But we must remember that most of this increase is boundary realignment of the originally approved plan.

We realize that our recommended change to Section 4(b) (a) to reimburse local governments for lands they own that are to be part of the refuge is probably not possible. We merely wish to reemphasize some special financial assistance to local city governments which has not been realized. The City of Bloomington would use such funds in an innovative way in that they would set up an operating fund to manage their portion of the recreation area. The original refuge act implied such aid would be available.

Our recommended change to 6(a) is merely a house-keeping move. The original act required that the master plan be completed in 3 years. The master plan is now complete and therefore, we wish to have you ask the Secretary of the Interior to implement the master plan.

The recommended change to Section 7(a) is similar to 4(b) (a) above and our comments are the same as for that section.

In Section 10 (a), the House of Representatives increased the authorization to $24.9 million for a three-year period. We concur with this increase and we are asking you to increase it further to $29.5 to provide for purchase of the increased acreage added under Section 4(a) (1), and we would like the time frame extended indefinitely until the monies are spent. The three-year period is not sufficient to acquire the entire refuge and in a short time I would have to ask you for another extension.

The recommended change to Section 10 (b) is required to keep the development cost estimate in pace with inflation. The total for development is now estimated to be $9.8 million. Again, the time frame should be indefinite.

The recommended change to Section 10 (c) wherein we requested you ask the Secretary of the Interior be authorized to accept gifts, devices, bequests or loans of money, real or personal property, or proceeds therefrom, or interests therein for the benefit of the Minnesota Valley National Wildlife Refuge is intended to let you know the extent to which we are willing to go to begin and finish work on the Refuge Visitor's Center. The original refuge act promised this center and it is imperative that it be completed. A model for its construction could follow that used by many small towns in providing up-front capital monies to build needed post offices which were then leased on a buy-back basis. You may be aware of other mechanisms which could be used. But our emphasis is on getting visitor center construction underway in any way that seems appropriate.

Support for this facility is state and community-wide. The Bloomington Chamber of Commerce and City Council have corresponded with you on this issue. These groups see the visitors center as a kick-off for their multi-billion dollar commercial development of our now abandoned 100 acre metro-area stadium site. In other words, the visitor center is seen as an economic stimulus as well as having recreational and educational values.

This area means a great deal to all of us. Seeing and sharing the results of the work the USFWS is doing on this land is the principle

substance of our lives.

A core of over 100 volunteers are helping the refuge staff. The tasks they do range from computer programming to maintenance work, trail patrolling and plant, bird and mammal studies. A recent deer tagging effort involved 50 other volunteers including the vice chairman of the board of a nearby corporation. The movement of those deer are now being reported on by many individuals.

The work and commitment of the USFWS in this country is the only effort I know of committed to habitat protection and management of the continental eco-systems. This makes the difference in how well we can live and to our survival. This effort must move forward with strength at the Federal level as well as must the other environmental issues your committee regularly deals with. We need your continued commitment and strength of purpose.

The following editorial by Mary Ziegenhagen which appeared in the April Bloomington Current, summarizes the refuge's importance to us all.

The Bloomington CURRENT, April 14, 1983

Editorial/Opinion

No silent spring

The Minnesota Valley Wildlife Refuge that spans the floodplain on both sides of the Minnesota River from the Mendota Bridge to Jordan is a national treasure in our own backyard. Especially in April and May, when the spring migration is at full tide and we hear again there is no silent spring.

The refuge is mostly wild with only a few trails making it accessible to walkers, and the variety of birding experiences is thrilling. The warblers that soon will come to the cottonwood trees near the Bass Ponds in east Bloomington present a different sight and sound from the huge flocks of ducks, geese and gulls at Black Dog Lake just a few miles west. Louisville Swamp near Shakopee provides another experience altogether.

With so much of today mortgaged to the future, and this being tax time, we thought it would be good to remind ourselves of what our taxes have purchased for our grandchildren and their grandchildren.

There could hardly be a better gift to the future than that of nature in a wildlife refuge in the heart of an otherwise urban area.

—Mary Ziegenhagen

STATEMENT OF

PATRICK J. O'CONNOR

IN SUPPORT OF LEGISLATION TO ESTABLISH
THE U.S. FISH AND WILDLIFE FOUNDATION

PRESENTED TO

THE SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

OF THE

U.S. SENATE

MAY 19, 1983

MR. CHAIRMAN, in February of this year, our law firm was contacted by Theodore and Francoise Gianoutsos for the purpose of assisting them in planning their Estate. As our discussion of their affairs and their testamentary desires developed, it became apparent that their wills were not going to be "typical". Mr. and Mrs. Gianoutsos, who have been fortunate to have accumulated considerable assets, advised us that it was their desire that virtually their entire estate be left to the United States Government. Specifically, the Gianoutsos' wanted their gift to be given to the Department of Interior. This desire was based upon their great love for the outdoors and the abundant wildlife found in our country, and their commitment to the Department's programs to protect these resources.

What was most striking about this gift was its motivation. Mr. Gianoutsos is a first generation American and Mrs. Gianoutsos is a naturalized citizen. By reason of their own considerable talents, hard work and the opportunity provided to them in this country, they have been blessed with success. Because of their gratitude for all that this nation permitted them to achieve, the Gianoutsos' want to commit their resources to benefit the public. This is so because they realize that not only are we Americans blessed with freedom and opportunity, but also with abundant and beautiful natural resources and wildlife. These are national treasures that

can be shared by all Americans, regardless of their means. Unfortunately, as we all know, these resources are constantly being threatened by our growth and mismanagement. Mr. and Mrs. Gianoutsos, being avid outdoors people who enjoy hunting and fishing, wanted their gift specifically to be used for the purposes of enhancing education and ethics among Americans who hunt and fish and for the preservation of endangered species.

Our first task was to help them fashion an appropriate vehicle to accomplish their purpose. They were very interested in establishing a trust which would generate funds over a long period of time to support specific programs. They wanted very much to have these funds administered within the Department of Interior. In looking for an appropriate mechanism, we discovered that the Department did not have the authority to manage, invest and reinvest funds in a trust for the purposes of supporting the Fish and Wildlife Service. We did discover, though, that there was such a foundation for the National Park Service. However, funds contributed to and managed by the Park Service Foundation could not be used for Fish and Wildlife Service programs. Mr. and Mrs. Gianoutsos, therefore, established private trusts in their wills with instructions that the income therefrom be given annually to the Secretary of Interior for specific programs to be decided on by their trustee in consultation with the appropriate Department officials. They have included a provision, however, that should a

Fish and Wildlife Service Foundation be established, that their entire estate would be transferred to that Foundation to be managed within the Department.

As a result of the information gathered in preparing their testamentary gift to the Department, Mr. and Mrs. Gianoutsos became committed to establishment of a Fish and Wildlife Foundation and that was the genesis of the Bill which you are considering today. This Legislation, which will allow funds to be managed, invested and reinvested for the purpose of generating income to support specific Fish and Wildlife programs, is an ideal vehicle for gifts of the type contemplated by Mr. and Mrs. Gianoutsos.

In these times of staggering governmental deficits, we think this is a rare opportunity to establish the means by which thousands of Americans who enjoy our vast wilderness and abundant wildlife can contribute to a foundation which, because of its affiliation with the Department of Interior, can support, in a coordinated manner, the various programs for the enhancement and preservation of these precious resources. It is my fervent hope that this subcommittee will act favorably upon this Legislation.

NATIONAL WILDLIFE FEDERATION, 1412 Sixteenth Street, N.W., Washington, D.C. 20036 (202) 797-6842
Office of the Executive Vice President

May 18, 1983

The Honorable John Chafee
United States Senate
523 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Chafee:

I am very pleased to add the support of the National Wildlife Federation for S. 1271, a proposal to establish a Fish and Wildlife Foundation to provide a vehicle for the acceptance of private gifts that would benefit fish and wildlife conservation.

The Foundation that would be created by this legislation is modeled after the successful Park Service Foundation. Establishment of this new Foundation would encourage gifts to enhance important conservation programs of the U. S. Fish and Wildlife Service.

We appreciate your co-sponsorship of the legislation and we hope it is given rapid approval.

Sincerely,

Jay

JAY D. HAIR

II

98TH CONGRESS
1ST SESSION

S. 696

To ratify an exchange agreement concerning National Wildlife Refuge System lands located on Matagorda Island in Texas.

IN THE SENATE OF THE UNITED STATES

MARCH 7, 1983

Mr. BENTSEN (for himself and Mr. TOWER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To ratify an exchange agreement concerning National Wildlife Refuge System lands located on Matagorda Island in Texas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law providing for the administration by the Secretary of the Interior of the National Wildlife Refuge System through the United States Fish and Wildlife Service, the action of the Secretary of the Interior in entering into the unique exchange agreement (entitled "Memorandum of Agreement between the United States Department of the Interior and the State of Texas for the management of the Matagorda Island State Park and

Wildlife Management Area, A Unit of the National Wildlife Refuge System in Calhoun County, Texas" and easements running to the United States and Texas hereinafter referred to jointly as the "Agreement", all of which are dated December 8, 1982) providing for integrated management (during the term of the Agreement) of National Wildlife Refuge System lands and State lands on Matagorda Island in Texas is ratified and approved, except that any amendments hereinafter made pursuant to the Agreement shall be consistent with the requirements of the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee) and other applicable provisions of Federal law administered by such Secretary. Nothing in the Agreement or in this Act shall be construed (A) as affecting the continued applicability of the National Wildlife Refuge System Administration Act to the Federal lands covered by such Agreement or the inclusion of such lands within the National Wildlife Refuge System, or (B) as ratifying or authorizing any other such agreements applicable to any other area of the National Wildlife Refuge System.

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III

98TH CONGRESS
1ST SESSION

H. R. 1935

IN THE SENATE OF THE UNITED STATES

APRIL 21 (legislative day, APRIL 18), 1983

Received; read twice and referred to the Committee on Environment and Public Works

AN ACT

To ratify an exchange agreement concerning National Wildlife Refuge System lands located on Matagorda Island in Texas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provisions of law providing for the administration by the Secretary of the Interior of the National Wildlife Refuge System through the United States Fish and Wildlife Service, the action of the Secretary of the Interior in entering into the unique exchange agreement (entitled "Memorandum of Agreement between the United States Department of the Interior and the State of Texas for the management of the Matagorda Island State Park and

Wildlife Management Area A Unit of the National Wildlife Refuge System in Calhoun County, Texas" and Easements running to the United States and Texas hereinafter referred to jointly as the "Agreement", all of which are dated December 8, 1982) providing for integrated management (during the term of the Agreement) of National Wildlife Refuge System lands and State lands on Matagorda Island in Texas is ratified and approved, except that any amendments hereinafter made pursuant to the Agreement shall be consistent with the requirements of the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee) and other applicable provisions of Federal law administered by such Secretary. Nothing in the Agreement or in this Act shall be construed (A) as affecting the continued applicability of the National Wildlife Refuge System Administration Act to the Federal lands covered by such Agreement or the inclusion of such lands within the National Wildlife Refuge System, or (B) as ratifying or authorizing any other such agreements applicable to any other area of the National Wildlife Refuge System.

Passed the House of Representatives April 19, 1983.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

II

Calendar No. 148

98TH CONGRESS
1ST SESSION

H. R. 1723

[Report No. 98–93]

IN THE SENATE OF THE UNITED STATES

APRIL 21 (legislative day, APRIL 18), 1983
Received; referred to the Committee on Environment and Public Works

MAY 16, 1983
Reported by Mr. CHAFEE, without amendment

AN ACT

To authorize appropriations through fiscal year 1986 for the Great Dismal Swamp, Minnesota Valley, and San Francisco Bay National Wildlife Refuges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GREAT DISMAL SWAMP NATIONAL WILDLIFE REFUGE.

Section 4(4) of the Act entitled "An Act to establish the Great Dismal Swamp National Wildlife Refuge", approved August 30, 1974 (Public Law 93–402, 88 Stat. 802), is amended to read as follows:

"(4) $34,100,000 for the period beginning October 1, 1977, and ending September 30, 1986, of which not to exceed $22,000,000 shall be available for land acquisition and not to exceed $12,100,000 shall be available for purposes other than land acquisition.".

SEC. 2. MINNESOTA VALLEY NATIONAL WILDLIFE REFUGE.

Section 10 of the Minnesota Valley National Wildlife Refuge Act (Public Law 94-466, 90 Stat. 1996) is amended—

(1) by amending subsection (a) by striking out "$14,500,000" and inserting in lieu thereof "$24,900,000", and by striking out "September 30, 1983" and inserting in lieu thereof "September 30, 1986"; and

(2) by amending subsection (b) by striking out "$6,000,000" and inserting in lieu thereof "$9,800,000", and by striking out "and ending September 30, 1986" and inserting in lieu thereof "which shall be available until expended".

SEC. 3. SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE.

Section 5(1) of the Act entitled "An Act to provide for the establishment of the San Francisco Bay National Wildlife Refuge", approved June 30, 1972 (Public Law 92-330, 86

Stat. 400), is amended by striking out "September 30, 1983;" and inserting in lieu thereof "September 30, 1986;".

Passed the House of Representatives April 19, 1983.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

II

98TH CONGRESS
1ST SESSION

S. 1271

To encourage citizen participation in wildlife conservation programs and to establish the National Fish and Wildlife Foundation.

IN THE SENATE OF THE UNITED STATES

MAY 12 (legislative day, MAY 9), 1983

Mr. CHAFEE (for himself, Mr. STAFFORD, Mr. RANDOLPH, Mr. BENTSEN, Mr. DOMENICI, Mr. MITCHELL, and Mr. BAKER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To encourage citizen participation in wildlife conservation programs and to establish the National Fish and Wildlife Foundation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Fish and Wildlife Foundation Establishment Act".

SEC. 2. ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) ESTABLISHMENT.—There is established the National Fish and Wildlife Foundation (hereinafter in this Act referred to as the "Foundation"). The Foundation is a charita-

ble and nonprofit corporation and is not an agency or establishment of the United States.

(b) PURPOSES.—The purposes of the Foundation are—

(1) to encourage, accept, and administer private gifts of property for the benefit of, or in connection with, the activities and services of United States Fish and Wildlife Service; and

(2) to undertake and conduct such other activities as will further the conservation and management of the fish and wildlife resources of the United States, and its territories and possessions, for present and future generations of Americans.

SEC. 3 BOARD OF DIRECTORS OF THE FOUNDATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—The Foundation shall have a governing Board of Directors (hereinafter referred to in this Act as the "Board"), which shall consist of nine Directors, each of whom shall be a United States citizen and—

(1) six of whom must be knowledgeable or experienced in fish and wildlife conservation; and

(2) three of whom must be educated and experienced in the principles of fish and wildlife management.

The membership of the Board, to the extent practicable, shall represent diverse points of view relating to fish and wildlife conservation. The Director of the United States Fish and

Wildlife Services shall be an ex officio nonvoting member of the Board. Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(b) APPOINTMENT AND TERMS.—By December 31, 1983, the Secretary of the Interior (hereinafter referred to in this Act as the "Secretary") shall appoint the Directors of the Board. The Directors shall be appointed for terms of four years; except that the Secretary, in making the initial appointments to the Board, shall appoint three Directors to a term of two years, three Directors to a term of four years, and three Directors to a term of six years. A subsequent vacancy on the Board shall be filled within sixty days of said vacancy in the manner in which the original appointment was made.

(c) CHAIRMAN.—The Chairman shall be elected by the Board from its members for a two-year term.

(d) QUORUM.—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(e) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board and that vacancy filled in accordance with subsection (b).

(f) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Foundation.

(g) GENERAL POWERS.—(1) The Board may complete the organization of the Foundation by—

(A) appointing officers and employees;

(B) adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this Act; and

(C) undertaking of other such acts as may be necessary to carry out the provisions of this Act.

(2) The following limitations apply with respect to the appointment of officers and employees of the Foundation:

(A) Officers and employees may not be appointed until the Foundation has sufficient funds to pay them for their service. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of

the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

(B) The first officer or employee appointed by the Board shall be the Secretary of the Board who (i) shall serve, at the direction of the Board, as its chief operating officer, and (ii) shall be knowledgeable and experienced in matters relating to fish and wildlife conservation.

SEC. 4. RIGHTS AND OBLIGATIONS OF THE FOUNDATION.

(a) IN GENERAL.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States;

(3) shall have its principal offices in the District of Columbia; and

(4) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

The serving of notice to, or service of process upon, the agent required under paragraph (4), or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(b) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(c) POWERS.—To carry out its purposes under section 2, the Foundation shall have, in addition to the powers otherwise given it under this Act, the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(2) to acquire by purchase or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income therefrom;

(4) to borrow money and issue bonds, debentures, or other debt instruments;

(5) to sue and be sued, and complain and defend itself in any court of competent jurisdiction, except that the Directors of the Board shall not be personally liable, except for gross negligence;

(6) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its function; and

(7) to do any and all acts necessary and proper to carry out the purposes of the Foundation.

For purposes of this Act, an interest in real property shall be treated as including, among other things, easements or other rights for preservation, conservation, protection, or enhancement by and for the public of natural, scenic, historic, scientific, educational, inspirational, or recreational resources. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation.

(d) CERTAIN LANDS, WATERS, AND INTERESTS NOT SUBJECT TO CONDEMNATION.—No lands or waters, or interests therein, that are owned by the Foundation and are determined by the Director of the United States Fish and Wildlife Service or the Migratory Bird Conservation Commission, as the case may be, to be valuable for purposes of fish and wildlife conservation or management shall be subject to condemnation by any State or political subdivision, or any agent or instrumentality thereof.

SEC. 5. EXEMPTIONS FROM TAXATION.

The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto. The Foundation may, in the

discretion of the Board, contribute toward the costs of local government in amounts not in excess of which, as a charitable and nonprofit corporation, it would be obligated to pay such government if it were not exempt from taxation under this section, and may agree to so contribute with respect to property transferred to it and the income derived therefrom if such agreement is a condition of the transfer. Contributions, gifts, and other transfers made to the Foundation shall be regarded as contributions, gifts, or transfers to the United States. The conveyance of any qualified real property interest to the Foundation shall be deemed to further a governmental conservation policy and yield a significant public benefit for purposes of section 170(h) of the Internal Revenue Code of 1954 (relating to qualified conservation contributions).

SEC. 6. ADMINISTRATIVE SERVICES AND SUPPORT.

The Secretary may provide personnel, facilities, and other administrative services to the Foundation, including reimbursement of expenses under section 3, not to exceed then current Federal Government per diem rates, for a period of up to five years from the date of enactment of this Act, and may accept reimbursement therefor, to be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such services.

SEC. 7. VOLUNTEER STATUS.

The Secretary may accept, without regard to the civil service classification laws, rules, or regulations, the services of the Foundation, the Board, and the officers and employees of the Board, without compensation from the Department of the Interior, as volunteers in the performance of the functions authorized herein, in the manner provided for under section 7(c) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(c)).

SEC. 8. AUDITS, REPORT REQUIREMENTS, AND PETITION OF ATTORNEY GENERAL FOR EQUITABLE RELIEF.

(a) AUDITS.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (Public Law 88–504, 36 U.S.C. 1101–1103), the Foundation shall be treated as a private corporation established under Federal law.

(b) REPORT.—The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress a report of its proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments.

(c) RELIEF WITH RESPECT TO CERTAIN FOUNDATION ACTS OR FAILURE TO ACT.—If the Foundation—

(1) engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with its purposes set forth in section 2(b); or

(2) refuses, fails, or neglects to discharge its obligations under this Act, or threatens to do so;

the Attorney General of the United States may petition in the United States District Court for the District of Columbia for such equitable relief as may be necessary or appropriate.

SEC. 9. UNITED STATES RELEASE FROM LIABILITY.

The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligation of the Foundation.

SEC. 10. AMENDMENT AND REPEAL.

The Congress expressly reserves the right to repeal or amend this Act at any time.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

For the ten-year period beginning on October 1, 1983, there are authorized to be appropriated to the Department of the Interior not to exceed $1,000,000 to be made available to the Foundation—

(1) to match, on a one-for-one basis, private contributions made to the Foundation; and

(2) to provide administrative services under section 6.

○